



READINGS ON LAND USE PLANNING IN OHIO



Readings on Land Use Planning in Ohio

Readings on Land Use Planning in Ohio was developed to accompany the Jennifer M. McSweeney Land Use Planning Course/Workshop for Local Officials. These continuing education courses, offered annually, are sponsored by the Ohio Department of Natural Resources, The Ohio State University School of Natural Resources, and the Ohio Cooperative Extension Service in cooperation with the Ohio Municipal League, the County Commissioners Association of Ohio, the Ohio Township Association, the Ohio Farm Bureau Federation, and the Ohio County Planning Directors Association.

This publication is also designed as resource material for use by anyone involved in land use planning in Ohio. The materials included are actual texts of various presentations given in past Land Use Planning courses and workshops. The authors represent areas of expertise in the field of land use planning in Ohio. We are grateful to the authors for their contribution of materials included herein.

James M. Dowdy
School of Natural Resources
The Ohio State University



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CONTENTS

Local Planning

- Local Land Use Planning** 5
James M. Dowdy
- How to Plan in a Practical World** 9
James E. Kunde

Zoning

- The Place of Zoning in the Planning Process** 19
Donald M. Buckley
- An Introduction to Ohio Zoning** 35
Harry M. Welsh
- General Zoning Procedures** 45
Robert C. Schroeder

Ohio Capability Analysis Program

- OCAP—A Tool for Local Resource Management** 69
Wayne Channell

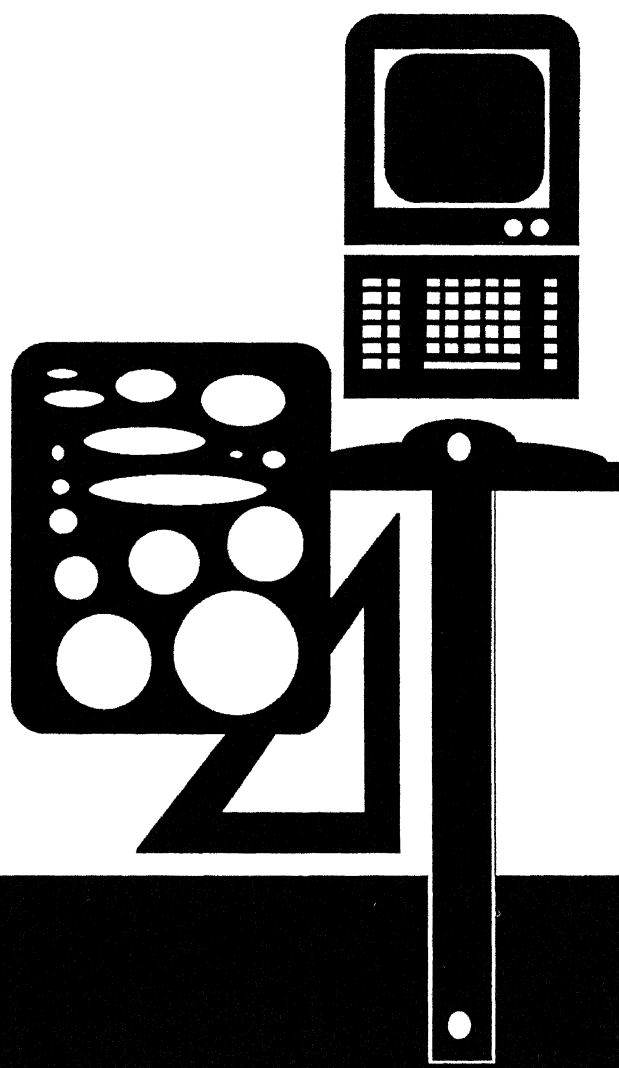
Agricultural Districts Law

- Ohio's Agricultural Districts Law** 77
John D. Rohrer

Appendices

- Contributing Authors** 89
- The Jennifer McSweeney Land Use Planning Course/Workshop** 93

Local Planning



LOCAL LAND USE PLANNING

James M. Dowdy

Visionary leaders have worked in Ohio for many years to improve local land use management. There is a continuing commitment to seek sound direction for efforts toward responsible long-term land use throughout the state. Many current leaders are concerned about poor land use practices and degradation of environmental quality in Ohio urban and rural communities. Thus, there is the need for communities to broaden their horizons, sharpen their focus, and be better prepared for the future.

Local Officials

Local governmental officials in Ohio have considerable authority in matters related to land use in their respective areas. Most of these officials are interested in improving their urban and rural communities through sound land use planning. Unfortunately, many of them have not received formal education or training for such planning, and they feel that they need to be better equipped to deal effectively with pervasive and far-reaching land use issues.

Local officials involved in land use affairs include mayors, members of city councils, county commissioners, township trustees, members of planning commissions, officers of development commissions, members of zoning commissions, zoning inspectors, members of boards of zoning appeals, and other local administrators. These members of local government have important responsibilities, and they perform valuable services in helping to manage land resource uses for their communities.

To address the needs of these various groups, The Ohio State University School of Natural Resources, the Ohio Department of Natural Resources, and the Ohio Cooperative Extension Service have joined together to provide land use planning information for local officials throughout Ohio. This planning information is intended to serve the continuing land use planning and management needs and interests for a wide variety of public officials from across the state.

Several related groups worked together to develop this information; the Ohio Municipal League, the County Commissioners' Association of Ohio, the Ohio Farm Bureau Federation, and the Ohio County Planning Directors Association actively cooperate in providing land use planning information for local officials.

The primary purpose is to provide sound and objective information that can be applied in practical situations. This information has been designed to assist elected and appointed local officials who are frequently faced with complex land use decisions that influence their communities now and in the years ahead.

Many communities now face land use decisions, and leaders are concerned with various problems. For example, a rural county may find that much of its good agricultural land is being converted to non-agricultural uses. An urban community may be vitally interested in stimulating economic development. A suburban township may be concerned about annexation by a neighboring municipality. These varying and often conflicting situations represent the challenge for sound land use planning.

Local Planning

This information is based on providing relevant subject matter from a broad perspective on land use planning and local resource management. Good planning is a process engaged in by decision makers. It examines trends in economics, personal values, and resource availability. It works with a broad base of neighborhood-level participation. It treats public expenditures as community investments in quality-of-life objectives. It integrates new decisions with past ones, along with a host of issues that are affected by each new decision. This broad perspective on planning leads naturally toward approaching the process of systematic local planning.

State laws provide the basis for a flexible approach to local planning in Ohio. Planning agencies are empowered to function at the regional/ multi-county, county, and/or municipal levels. Generally, most official land use planning functions are implemented by county-wide planning groups or municipal planning agencies. State laws have evolved to facilitate the processes of local planning to help guide municipalities in their responsibilities with the more intensive land uses. Similarly, townships and county governments have the authority to work and plan generally with more extensive types of land uses. Consequently, local officials need current information on appropriate tools for good land use planning in relation to their own community situations.

Emphasis is given to approaching the planning process as a means for coordinated problem solving. Ohio has a strong background influenced by private property rights, and tools are needed for effective local land use management. The general planning process is a systematic means for identifying long-range community goals, establishing achievable objectives, conducting relevant studies, implementing realistic plans, and adopting consistent land use regulations. Many communities have had experience with various land use tools and regulations including zoning ordinances and subdivision regulations as well as related building and housing codes. Zoning is considered to be a particularly important tool within the context of comprehensive land use planning.

Land Use Regulations

Zoning ordinances or resolutions are local laws governing land use. They determine the kinds of uses, intensity of use, and related supporting facilities. Zoning laws encourage land uses that conform to the general comprehensive community plan. Local zoning is permitted and regulated by state enabling legislation. It is a legal tool that protects people and guides growth in the directions indicated by the land use plan. Zoning

may be used to ensure the orderly and consistent development of land uses within the community, prevent overcrowding, promote an environment beneficial to health, prevent traffic congestion, promote optimum use of sites, and prevent conflicting uses of land on neighboring properties. Through zoning, the community has the ability to legally designate and locate various zoning districts and identify uses of land and structures within those districts.

Zoning is essentially legal land use control for the public health, safety and welfare. When considering the legal aspects of zoning, there must be concern for both the procedural and substantive parts of the process. Clearly, it is important that the local zoning regulations include all the land uses and related standards that the community wishes to control. It is equally important to give attention to adopting, revising and enforcing the zoning regulations according to approved procedural rules of practice. Zoning is not the only regulatory tool available to local officials interested in good land use for their communities. It certainly represents a useful means for these purposes, but there are other alternative land use regulations to be considered for various community situations.

In addition to zoning, other regulations related to land use include subdivision regulations. Subdivision regulations control the division of land, its transfer, and the improvement of land as development occurs. These regulations primarily control the design, layout, division and improvement of land as it is sold or developed. Planning commissions may adopt subdivision regulations to provide for appropriate arrangement of streets and highways; assure adequate and convenient open space for traffic, utilities, access of fire fighting equipment, light and air; and to prevent congestion of population. As community development pressures increase, effective subdivision regulations are needed to ensure accurate land title records and proper design and development standards. The main objective of these laws is to provide optimum livability for community residents and ensure that the costs of subdivision development do not fall disproportionately upon the general public.

Technical/Educational Assistance

As local leaders seek to improve the quality of life within their communities, they can find programs of technical and governmental assistance in many areas. For example, urban community leaders may be interested in programs of assistance related to: 1) managing urban growth and development; 2) economic development programs; 3) historic preservation as an economic development tool; and/or 4) erosion and stormwater control. Local officials in rural communities may be interested in programs related to: 1) preserving farm land through agricultural districts; 2) oil and gas well drilling procedures; 3) designing on-site sewage systems; and/or 4) developing and operating sanitary landfills. Available information on a variety of programs can assist communities as they move ahead with systematic local planning.

Many urban communities in Ohio are concerned about economic development. They see a need to revitalize deteriorated business districts, and they are recognizing advantages and opportunities through planned

and organized preservation of sound historic structures. As local groups survey their situations and study their needs, they gather the information and data required to understand their problems and explore alternative solutions. In many instances, progressive urban communities are finding real benefits related to rehabilitating commercial buildings to project the unique characteristics of their architectural resources.

In many rural areas of Ohio local leaders are interested in preserving their prime farm land. They see the need to manage this vital resource base to produce a sustained high yield of crops to serve the growing food consumption demands of domestic and export markets. Ohio now has legislation providing the opportunity for farmers to form agricultural districts. There are significant real estate tax incentives related to this program. Agricultural districts legislation represents another initiative aimed at assisting rural communities interested in long range land resources management.

Suburban communities often face multiple challenges associated with increasing populations. In many instances, there are new suburban residents who want the community services normally provided by larger municipalities, but they are unhappy with paying the costs related to developing and maintaining such levels of services. Some of these suburban townships wish to maintain their essential rural character, but they need to plan for orderly growth and development. They need to analyze their land capabilities and prepare their local land use regulations to serve their future community goals and objectives.

Land Capability Analysis

One of the tools available to local officials and others for managing natural resources is the Ohio Capability Analysis Program (OCAP). OCAP is a computer information system for storage, retrieval, and mapping natural resources data. OCAP stores, on a regional basis, information on soils, geology, groundwater, land use and other natural resources data. The major advantage of this system is in computerizing natural resources data and easily manipulating and analyzing data to perform land capability analysis. OCAP provided maps and related information that assist local officials with their planning and management decisions.

Conclusion

The Ohio State University School of Natural Resources, the Ohio Department of Natural Resources, and the Ohio Cooperative Extension Service recognize the need to continue to offer educational and technical assistance to local communities interested in land use planning. This publication includes material on a variety of topics from several authors compiled to provide relevant information applicable in practical local planning situations. It is intended to benefit communities as they plan and work to be better prepared for the future.

HOW TO PLAN IN A PRACTICAL WORLD

James E. Kunde

Few subjects have been more discussed and maligned in American political science than the subject of planning. Our American traditions have often been described as anti-planning, and no discussion generates more heated debate than the subject of regulation. "Why can't I do what I want to do— isn't this a free country?"

It is almost ironic that we have become an increasingly regulated society without having significantly increased our ability to plan. In fact, many of the regulations that so chafe us have been brought about because we don't plan. We also spend increasing amounts of planning money each year and have created a growth profession called community planning, and yet, by and large, we still don't plan very much compared to other societies.

The predominant reason we don't plan is not as philosophical as we sometimes make it. America, until the last few years, has always seemed to be a land of unlimited abundance. It had the largest available agricultural areas of any land mass, abundant fresh water, enormous resources of fossil fuels, minerals and timber and, most important, not very many people. There were enough people to steal the land from the Indians and defend the land from other Europeans - but not enough to use it up.

Most of that has changed. America now has more than enough people to use up its resources, added to which its energy-dependent technology is increasingly demanding more resources, and its economic system is so involved with other lands, that we now find ourselves as a net importer with rapidly decreasing shares of markets we once took for granted. So, the time is right to take planning more seriously.

Rationale for Planning

Why do we want planning? What is supposed to be the reason for planning staffs and planning budgets? The textbooks tell us planning is under, primarily, for two purposes:

1. To provide coordinated design of physical developments in order to achieve beauty, orderliness, and efficiency.
2. To take account of long-range consequences of action alternatives, so that efforts taken to solve immediate problems don't make things worse later.

Later literature suggests that physical planning be coordinated with the "social" needs (employment, health, education, etc.) and the aim should be to provide an enriching environment or "quality of life" for all people.

The Practice of Planning

With complete disregard for the foregoing, planning has evolved to accomplish other priorities:

1. To segregate conflicting land uses by zoning, with most time spent on case-by-case zoning decisions.
2. To prepare capital improvement budgets by coordinating the demands from public service departments.
3. To correspond in voluminous literary packages with the state or federal government in order to get pet capital projects through myriads of requirements.

What Planning Ought To Be

I suggest that what planning ought to be— and is in a few places— is the following:

1. A process engaged in by decision makers that examines trends in economics, personal values and resource availability and works with a broad base of neighborhood-level participation.
2. A process engaged in by decision makers that treats public expenditures as community investments in quality-of-life objectives.
3. A process engaged in by decision makers that integrates new decisions with past ones, along with a host of issues that are affected by each new decision.

If the above are accepted as true, then most planning is not the role of separately titled planners but of elected public officials, who are the real decision makers and policy makers.

Structures For Planning

There has been considerable debate over the years about the best structural location for the planning function in a governmental unit. Most of the debate has centered around two options: a separate planning board of citizens staffed by professionals, either chosen by the board or appointed outside the main administrative bureaucracy (by the elected governing body, for example) or, staff appointed by, and responsible to, the chief administrative authority— often with an advisory board of citizens.

In general, political scientists argue that the staff plan better integrates the function into the bureaucracy, but the separate planning board is better for examining issues that might be unpopular and floating out trial balloons that won't "tar" the administration if they burst. Most cities and counties in Ohio are governed by statutes that require the use of a separate board outside the general administrative bureaucracy.

Both of the above models can be effective. What is really at issue is the decision makers' use of the planning process; the success of either model is more related to the commitment of elected and appointed leadership than to anything else.

The "Governance" Function

Even if the decision makers are committed to planning and they do engage in processes that examine the interrelatedness of decisions, it doesn't necessarily follow that the resultant planning is helpful to the community.

A major problem with all institutions is their tendency to become self-serving. This is no less true of government than anything else. In fact, if you examine the laws of the state that pertain to local government and the local charters of home rule communities, you will find described a multiple-function public utility. By and large, in this country we have not created local government, but rather special purpose public service districts often having objectives that conflict with those of other districts.

In the early 1960s, the federal government recognized the need for local "governance" (functions related to broad issues like crime and housing) and stepped in with direct intervention. Most of that direct intervention didn't work very well, and states and cities lobbied for the right to use funds as they saw fit. By and large, they succeeded, but they did not make any significant change in the laws or in the outlook that had previously guided them. Thus, we continue to respond to crime issues with police, welfare issues with social workers, and educational issues with teachers, none of which has very much affect on the issues and the root problems in which those issues are grounded.

Public Involvement

Nowhere has an issue been more poorly handled than the case of citizen involvement. One of the great new insights of the 1960s was the need for "citizen participation." So we set out to develop citizen participation in planning to assure ourselves that the "real" needs of the community were being addressed. The pollsters now tell us that after three decades of many new citizen involvement structures we have a populace more negative toward public and private institutions, more alienated toward public decisions and less participative in all kinds of recognized participatory structures, even voting.

In general, the structures created were misleading. They gave us the illusion of participation without any substance. These three causes can be cited as:

1. Poor penetration in the community. Most structures involved only the people who were picked, without any feed-forward or feedback to larger constituencies.
2. Lack of "ownership" of ideas. The structures were often designed to review and ratify the proposals and ideas of the experts.
3. There was nothing for the citizens to do. The structures were designed for the development and direction of government programs. There was no active role for the citizen. He or she was to be "served."

I think we learned something from those efforts, not because we were so smart, but because of what citizens themselves have said and done.

We have learned that:

1. People live in small communities or neighborhoods, not cities or counties. They are prepared to invest their time to make their neighborhoods better, but they are generally not inclined to get genuinely involved in broader units.
2. People have a better conception of their problems than bureaucrats do because they focus more on the issue and less on the structure.
3. Long-term commitment is vital to the improvement of quality of life. However, citizen commitment is generally not consistent. It has to be maintained through slack periods by some kind of meaningful structure.
4. People's preferences and concerns are driven by values which change over time. These value changes occur in relatively predictable patterns, and generally precede the willingness of government or business to act.

When the populace is fired up over a specific issue, such as school desegregation or rising utility rates, citizen participation is high. But when the issue subsides, people tend to draw back into the routine of job, home and family. I'm saying that we need to develop structures which build participation on the base of job, home and family issues and anticipate the large community-wide issues because of their relationship to the smaller scale where people have their interest.

The Mechanics Of Planning

In general, traditional planning focuses on the tools of zoning and subdivision controls—both regulatory concepts. Folks, it's too late to make much difference in this regard. The tools of development are highways, rail lines, sewers, water lines, and utility services like gas and electric lines. If these are available, zoning laws or subdivision controls make only minor differences.

In fact, the focus of most zoning, to segregate uses, is often counterproductive to the creation of the kind of communities people want. Zoning does have its place as do subdivision regulations. But let's focus on the real game—where do you put the infrastructure?

The use of public infrastructure as an investment to create desirable land use and to conserve public service costs is a new concept for most people. I can remember suggesting to the Finance Committee of the Ohio Local Government Services Commission several years ago that it was ludicrous to talk about planning for Ohio's public service financing without talking first about land use planning. The group sat stunned for a minute, and then went about business as usual, suggesting the usual tax reform tripe that collects dust in state libraries.

If the issue is infrastructure, the key question is "Who makes the infrastructure decisions?" The answer is that those decisions are usually made by separate bureaucracies, most of which require ratifying decisions or the cooperation of the elected officials of general purpose local government, particularly county commissioners. A process for examining those ratifying

decisions before they are made is where real planning can take place. A master plan can be very useful but only if the elected officials themselves have developed it and consider it their turf to protect. Good decisions on infrastructure preserve the public budget and conserve key natural resources such as farm land, water, and recreation space. The availability of the latter is often cited as the key to economic development.

Program Budgeting and Plan Implementation

It all sounds very good to suggest preparing a plan and then using public expenditures for infrastructure as investments. However, the freight train of local government doesn't stop and hold still when we want it to. Those decisions are made every day or every week, and who has the time to really sit down and be involved in a master plan, much less involve people in neighborhoods and small communities in really listening to their needs? Well, it isn't easy, but making decisions off the wall and running after complaints caused by past bad decisions isn't any easier. The key is process, process that makes it just as easy to make a good decision as a bad one.

We know a lot about process in this country. We used management teams to create the world's most sophisticated nuclear weaponry and put a man on the moon. But we use the antiquated "committee" to decide the public policies that shape our everyday lives. Can we do better? Of course! Good group process can do the same job better and in less time. Who knows how to do group process? Answer: there is a good group process person in nearly every state university or community college in this state. But even if you don't want to use an outsider, anyone can learn some basic group process techniques in a few days of careful study. Some people, but not very many, use good group process "naturally." In nearly every case, direct attention to process is necessary to make a team out of a committee or commission. That isn't to suggest good group process screens out debate. It only screens out that kind of debate where people talk past each other or spend most of their time on the issues that don't really matter.

Good processes should start with the basic sessions of elected officials and appointed planning board members. Ideally, if the public agenda is long, rubber stamp issues should be separated from the more important business. The more important issues should be taken up in policy sessions, where discussants talk to each other and use visual aids freely and extensively. We recommend that the use of a policy agenda be preceded with one or more day-long retreats where important issues for the future are identified and matrixed one against the other to develop a model of their interrelationships. With this basic mode, areas of important disagreement or lack of knowledge can be highlighted and researched by staff.

Once a model is created, it needs to be displayed openly in the policy discussion chamber and reviewed and updated frequently. The model should be a screen through which all substantial decisions are evaluated.

One can debate whether public input is best before the first planning retreat or after, but I'd suggest after. The outcome of a good planning

process should be the recognition of the importance of self-interest-based citizen action at the grass roots level. By developing a service model that encourages selfdependency, the government official sets the stage for truly meaningful involvement, not the surface kind.

Once this kind of system is in effect, the more sophisticated work of the professional planner (and other professional disciplines) can be focused on really useful questions. I have just said that areas where elected officials disagreed or were unsure about interrelationships were prime research targets. Here is where staff can be used to research the experience of other communities or consultants can be employed to provide additional insight. Such work is focused on a "real" topic that decision makers are interested in. Nearby universities can also play a role in research work in these areas.

The ultimate sophistication is to put the system into program budget terms. In this context a program budget is a way of expressing the decision makers' vision of the needs of the community in the context of current spending. Budgeting becomes a way to achieve targets, rather than a way to bargain between constituent groups (usually department heads or separately elected officials). With today's data tools, it is relatively simple to have a budget available both by line item, to meet state auditing requirements, and by program, to be useful in action strategies. Once an action matrix is formed and a program budget is developed, a language is created wherein citizen, professional planner and elected official can talk to each other on equal footing. A program budget prepared by experts to deal with experts' issues is almost worse than no budget at all for public dialogue. A line item budget by itself is equally frustrating to citizens who have no way of knowing if the fire pumper needs overhauling or not. But a program budget in lay terms is a real tool to put a local government into the business of governance.

Multi-Level Planning

Local units of government are not self-sufficient. Both the state and federal government exert enormous direct and indirect influences on communities. The Montgomery County Expenditure Study of 1973—which tracks the expenditures of all governments in one Ohio county for one year, provides a startling insight. In that county, all governments spend \$1.4 billion in one year—through 270 separate agencies! In 1973 dollars, that's about \$3,000 per capita (or \$8,000 per household dollars)! Moreover, most of the influence of the federal and state governments is not reflected in expenditures at all. Regulations (or the lack of them), tax policies and administrative guidelines and procedures make more impact than combined expenditures.

So what do you do? Some local officials feel the influence of higher government is too enormous to deal with and they simply respond passively to nonsensical contradictions as "something you live with." Others attempt to wall themselves away from these influences and look at local responsibility in the narrowest of terms. Neither of these approaches is very practical.

In general, what the federal government does best it does the least of, and what it does worst it does the most of. What it does best is to articulate broad public policies and focus national priorities on critical issues. What it does worst is to specify things like the correct height of the window sills in public housing units. In general, state and even local governments follow this same pattern.

Once a local planning unit has its act together, it can exert an enormous influence on state and national priorities. It may be able to get higher levels to do more of what they do best. Why does the federal government have to tell us to preserve a particular tract of farm land or set treatment standards for our water supplies? Why does the state government have to tell us what we need in schooling curricula? The messages should really be flowing the other way! In fact, they do when a local government has done its homework and knows what is needed for its community and puts community needs above organizational needs. A local unit that has citizens involved at the grass roots level speaks with a unique and powerful voice to others. A local unit that knows what it needs in terms of public investment to achieve a high quality of life can deal a deadly blow to regulations and policies of higher governments that are counter productive. In a sense, to borrow David Walker's phrase (from ACIR), local governments need their own foreign policy ("foreign" meaning other local jurisdictions, the state and federal governments). In that circumstance, a local government that has its own act together can be the David that takes on the Goliaths.

Does this version of planning sound a lot like policy development and administration? I hope so, because that is where real planning needs to be done. The development of a zoning system and subdivision regulations flows out of this context. In the system I've described, the focus is on the role of public infrastructure as an investment in quality of life. As infrastructure is developed, plans can be made to finance the services for the people who will reside in new areas as well as provide balanced services to those who live in older established areas. Those who want to live where infrastructure cannot reasonably be provided need to comply with the state health requirements with their own resources - which means they have to have their own funds or pool resources with others. Free choice is maintained and regulations can be minimized.

This probably sounds simpler than it is. Getting officials to use group process and to develop their own plans to deal with issues is an enormously difficult intervention. No one likes to change habit patterns, even bad ones. Usually, it's easiest when one particularly strong leader can be sold, or when a new majority is elected.

The role of the planner can be described as that of a process facilitator. After processes are established, implementation is more simple, even though complex analysis may be needed. When elected officials ask for a more complex analysis, they will probably respect what they get, and the result will be much more practical.

Zoning



THE PLACE OF ZONING IN THE PLANNING PROCESS

Donald M. Buckley

All elements within a comprehensive plan must have a direct relationship to each of the other elements if the entire plan is to be workable. These relationships can best be explained through the use of a chart which displays the three steps involved in the development of a comprehensive plan and the individual elements that are part of each stage of development. This diagram is shown in Figure 1.

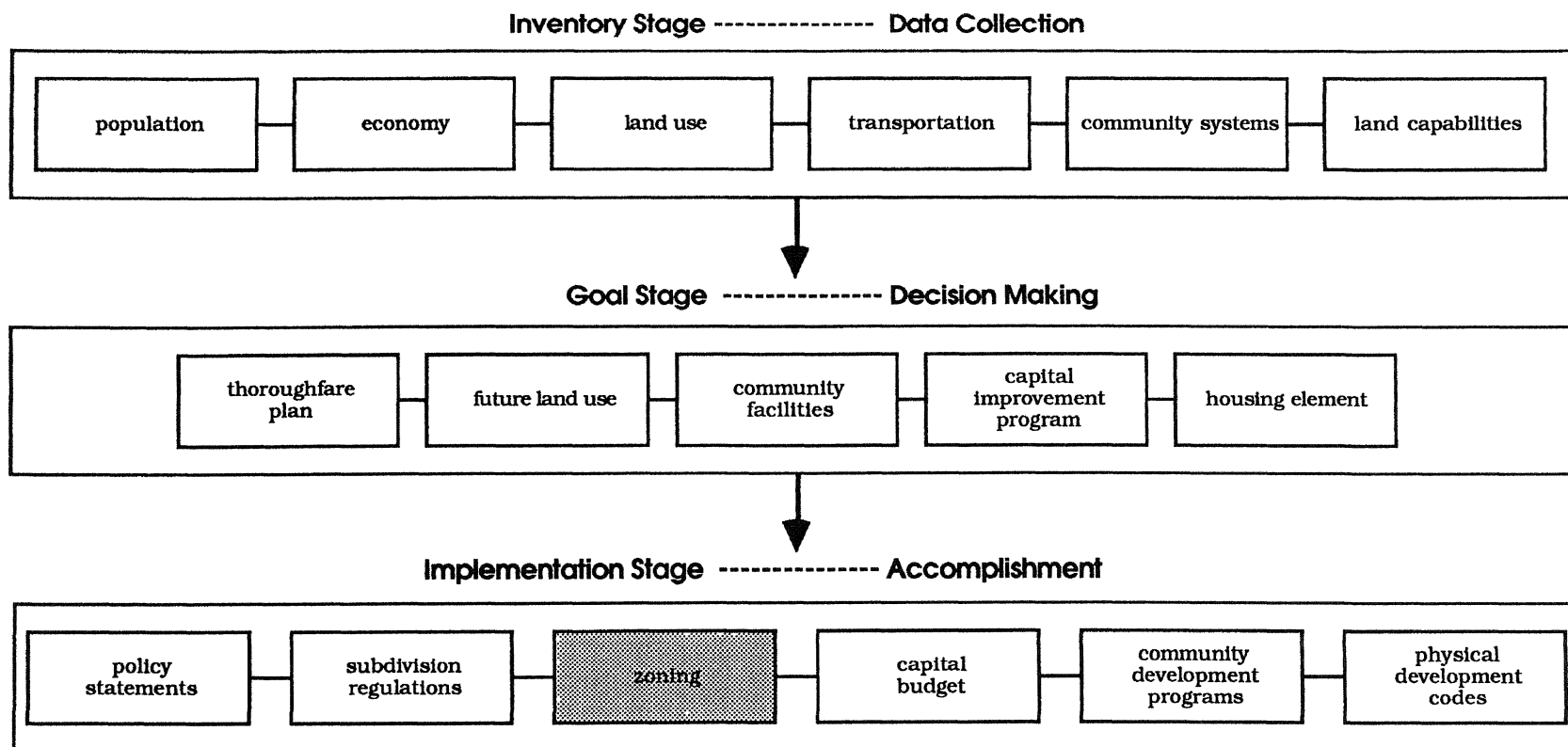
The three steps are broadly defined as: 1) the inventory stage or data collection; 2) the goal stage or decision making; and 3) the implementation stage or tools for accomplishment. In the simplest possible terms, the three steps become: Where are we? Where do we want to go? How do we get there?

I. The Inventory Stage

A) Population and Forecast. In order to make a reasonable assessment of the land use, facilities, social services, transportation, housing and economic needs of future community citizens, it is necessary to develop some firm idea of how many people must be planned for and the demographic characteristics of those people. This is generally done through an analysis of census data, both current and past, to determine which historic trends appear as important factors in the existing population or will control or shape the type of people likely to reside in the community in coming years. Consideration should be given to the number of physical facilities that will be necessary; how much water will be pumped and treated; how much wastewater must be disposed of; what amount of land will be required for housing, parks and playgrounds, schools, and disposal of solid wastes; how many miles of streets the community should be prepared to maintain; the necessity of expanding governmental services; and the required levels of transportation services. These and many other questions can only be answered in terms of total anticipated population. More important than total numbers in determining social service needs are the characteristics of age, race, sex, fertility, mobility, commuting patterns and life styles which all relate to the quality and quantity of health and welfare services, schools, fire and police protection that the population will demand.

Population forecasts, at best, are educated guesses. Far too many outside influences exert pressures on local or regional demography to allow for complete accuracy. A decision by a large firm to locate a high-employment factory, or by a state government to construct a major

Figure 1: The Place of Zoning in the Planning Process



highway, can devastate historical population trends. The importance of population forecasts is not in total accuracy but in predicting likely levels and characteristics to which physical planning may be correlated. If something happens to knock the forecast into a cocked hat, the planning is simply adjusted to meet the new level.

B) Economic Base Study. This element reveals how the people of the community make a living as well as the potential expansion of the economic base. Both are keys to the future and must be used to make major decisions about the levels of service which governments must ultimately provide. Commuting patterns, kinds of work, educational levels, income and shopping patterns all relate to the interaction between citizens and government, the generation of taxes and the types of services likely to be required. Physical needs are also a partial function of the economy. The types of commercial and personal service activities available within a given community are a good clue to the ebb and flow of the dollars earned by its citizens. As an example, it is not uncommon for a newly suburbanizing area within commuting distance of a core city to lack many of the shopping, personal services and professional activities normally associated with its level of population. People who migrate out of the core city to the suburbs have a tendency to rely on the stores, medical facilities and other such services that they were accustomed to before they changed place of residence. This tends to suppress business growth, and, it also suppresses tax base and levels of service which can be provided in the new community.

By the same token, a community may aspire to diversify its economic base in some areas where it does not have the attributes to effectively compete. Development of heavy industry, for instance, normally requires the presence of rail, highway, water capacity and pressures and sewage treatment of a quality which is simply not present in all areas. Other qualities such as natural resources and markets are more basic to specific industries and must be addressed on an individual basis. The availability of a trained labor pool or the ability to attract and accommodate one is another consideration. In short, some communities have the potential to attract certain economic activities while others lack that potential. While human made or influenced potentials may be altered, the community must be aware of the costs involved before the attempt is undertaken or a determination made to shift emphasis to other economic avenues.

C) Existing Land Use. The way land is used now determines the options available for future land uses. A community made up of predominantly single family units on relatively large lots is not likely to be favorably inclined toward higher densities of residential development. Areas of highly specialized and high return agriculture are inclined to resist any large scale development which might interrupt economical farming practices. It is extremely costly to provide highly scattered or strip developments of any type with services and it also places a heavy burden on local taxes. These and other considerations must be taken into account in the existing land use study because they can directly foretell problems which may occur and cue governments to the amounts and types of services they will be called on to provide.

Normally, the existing land use study consists of two parts: 1) an actual enumeration of the types and amounts of land utilized for various classifications of land uses, and 2) a detailed analysis of the effects of the types, patterns and distribution of the various uses. Land use is generally presented graphically on maps and in tabular form indicating the amount of land consumed by each category. Depending on the size and degree of development of a particular community, the categories inventoried may vary considerably but generally fall somewhere within the following range:

Residential

Single Family
Two Family
Multi-Family (Number of Units)
Mobile Homes
Seasonal Homes
Vacant Residential

Commercial

Neighborhood Business
Highway Oriented Business
Automobile Intensive Business
Consumer Business
Shopper Business
Central Business Districts
Wholesale Business
Vacant Business

Industrial

Light Industry
Heavy Industry

Intensive Industry
Extractive Industry
Warehousing
Vacant Industry

Agriculture

Cropland
Grazing Land
Orchards
Wood Lots

Public & Semi-Public

Public Buildings
Recreation Areas
Churches and Institutions
Schools Utilities
Vacant
Waterbodies
Forests
Fallow Lands
Streets and Highways

The degree of data allows the planner to draw conclusions about the availability of land for future development, the most economical spatial distribution of the various categories of use and the amount of land which should be reserved for each category.

D) Transportation. In this day and age when the movement of people and goods is often a determining factor in how or if a community will develop in the future, the transportation network sometimes becomes the paramount factor in development. Until recently, a local government had little input in determining the location or direction of transportation facilities. Highway construction as a state function normally was undertaken solely with consideration of engineering or cost factors and with no thought of the impact a facility might have on a community's future. Recent federal directives have altered this situation somewhat but local governments still have little influence on major transportation decisions. Rail, water and air transportation are either fixed in place or controlled by private or quasi-public organizations, leaving the community with little chance to coordinate these transportation activities with its desired developmental patterns.

Each community, however, has a large network of local streets over which it does hold sway and these, plus mass transit, are the main arteries

to be studied on the transportation inventory. The classification of the street system by function (ability to carry traffic and where it can be carried to) goes a long way toward indicating to a community the density of development which can be supported by the transportation system. An eighteen-foot pavement with narrow shoulders and bridges and numerous curb cuts simply cannot carry the volumes of traffic possible on better designed streets. By gearing land use controls to the functional classification of streets, it is possible for a community to forestall some traffic problems. Such a classification also permits the community to control the dedication of rights-of-way and, often, even the construction of additional pavement widths as vacant lands are developed, thus placing the burden of costs on those who create the problem rather than the taxpayers at large.

E) Community Systems. Community systems are those service functions that governments and special districts generally perform for citizens. Both hardware and software functions are considered as part of the community systems, although in physical planning much greater emphasis is normally placed on brick and mortar facilities. This study inventories and analyzes the effectiveness of water and sewer systems, public buildings, sanitation, police and fire departments (equipment and personnel), street maintenance, parks and recreation, schools, public welfare and health functions and also delves into the personnel levels of all governmental offices. This inventory allows a comparison between the local community and national standards to determine if, locally, government is able to provide acceptable levels of service for its citizens. It is not sufficient to simply make a list and locate each utility and service but rather they must be studied to determine if each function can provide the level of services which are required and if they are capable of accepting anticipated levels of growth. The size of water line, for instance, may be sufficient to support present and anticipated development but if the pumping, treatment or pressure is not up to par, the system simply is not supplying the quality of service demanded. Sewer lines suffering from serious infiltration, although of acceptable size and with sufficient treatment capacity, may be seriously overloaded in times of heavy rain. The study of community systems must, therefore, be detailed enough to allow for judgments relative to present quality or future extensions of service to be made. This allows the community to make basic decisions about needed improvements and to set priorities. It also allows governmental agencies to give intelligent answers when pressures are applied for major utility extensions or requests for new facilities are received.

This is one of the most recent studies to be added to the inventory stage of planning. Such studies are made possible by the computation of physical data, much of which has been supplied by remote sensing, soils studies and improved mapping procedures. In simplest terms, there are land areas which, due to conditions such as topography, soil types, flooding conditions, depth to bedrock, the water table and other physical characteristics, cannot support high densities of development without major alterations and possible disruption of the environmental balance. Farmers and people who work the land have known this for years and have adjusted land use practices in order to increase yields and protect their investment. With the advent of suburbanization, many lands were developed solely because of location, availability, price or physical setting with little

regard to long-range consequences.

The land capabilities study attempts to alleviate this problem by identifying those areas which are environmentally sensitive and establishing policies which will aid in protecting them. The study is used later in the planning program to develop land use control measures, such as subdivision regulations and zoning, which reflect the land's ability to support various densities and types of development. The land capabilities study gives the community a rationale on which to base decisions about how lands should be developed and under what conditions. This approach also identifies those lands which are suitable for development and they, in turn, can be compared with the population, economic, existing land use, transportation and community systems studies in order to establish the sequence, timing and amounts of land which will be required to meet future needs.

Only when a community completes a series of studies as described herein is it really able to say, "This is where we stand at present, and these are our major problems and potentials for the future." It is then possible to go on to the second phase of the process.

II. Goal or Decision Making Stage

The goal stage or decision making step is probably the most difficult within the whole planning process. While the inventory stage is largely the purview of the planning department, the goal stage requires the input of decision makers and citizens. Goals must eventually be implemented if planning is to be effective and this can only occur if the general population concurs in the goals and public officials take steps to adopt measures and policies geared to achieving them. The difficulty arises from the fact that at this stage, the special interests, who are often best organized and most vocal, make themselves heard and influence public officials while the feelings of the public-at-large are rarely ascertained. Even if it were possible to gather the input of vast numbers of citizens concerning the directions they wish governmental actions to take, few have the ability or training to back off and oversee the total ramifications involved in governmental actions.

Nevertheless, goal setting is a necessary step in the planning process and is usually accomplished by a few decision makers (elected officials), a representative committee of citizens and the planners working in consort. Again, the goal stage is made up of a number of plans which must be considered and developed as parallel studies. Although each may be presented as a separate document, none may stand alone as they are mutually dependent on each other.

A) Future Land Use Plan. Using the forecasts of population and economy together with the existing transportation networks, community systems, land use patterns and land capabilities, the future land use plan pieces together the design of the community for some given time in the future, generally twenty years hence. The plan, consisting of text and maps, is not intended to show the exact location of future uses or to commit a specific parcel of land to development while avoiding another. It does, however, indicate the approximate amounts of land which will be

needed for anticipated growth and the generalized spatial distribution which is most economic and efficient for the community to maintain as well as most convenient for future citizens. In order to accomplish this, the community must have some firm idea of the direction it wishes to take in the future—its goals.

Land use goals provide a verbal description of the desirable patterns, distribution and timing of future growth as these factors relate to the physical, social and fiscal advantages or constraints of the planning area. They are broad statements of a community's aspirations. Goals may cover the areas of urban design, recreation, residential, commercial and industrial development, employment, infrastructure (water, sewer, streets, buildings), urban development, economic factors and fiscal concerns. A community may, for example, see its role as a place for residential development as a result of its location on the fringe of a high employment metropolitan core city. In this particular case an adopted goal may be: "To create a suitable environment for, and encourage residential uses, through the reservation of appropriate land areas and the development of supplementary utilities and services." Another community, detecting a serious unbalance in its economic base may seek to: "Develop or attract industries which are labor intensive and, therefore, maximize the number of jobs created in relation to the cost of providing services to new industries." The city of Beloit, Wisconsin, handles the goal establishment process in two steps, setting broad goals to be followed by specific objectives that will be sought through planning. Within the land use plan Beloit adopted, among others, were these two goals with accompanying objectives:

Overall Goals

- Allow citizens to achieve their fullest individual potentials for intellectual, cultural, and economic achievement.
- Provide a strong, stable economy capable of supporting the total environment in which citizens live.

Specific Objectives

- Seek to grow at a faster rate than during the past decade.
- Encourage expansion of institutions of higher education.
- Encourage a greater quantity, quality and variety of housing.
- Preserve key areas for park and recreation development.
- Improve physical and functional relationships between land uses.
- Maximize accessibility and convenience of travel from all segments of the potential market area.
- Support expansion of existing industries and attraction of new diverse industry.

As the plan is developed, these goals and objectives are translated into specific land use recommendations. If the community wishes to accelerate growth, additional land areas must be set aside and primed for residential, commercial and recreational uses: To encourage greater quantity, quality and variety of housing, it will be necessary to provide a wide range

of allowable residential densities and flexible standards for their development; Supporting industrial development will require the designation of the best possible lands which have or may be easily served by quality transportation and utility networks and which will not disrupt existing land uses and; If key areas for park and recreation are to be preserved, they must be identified and suitable methods to reserve them established.

B) Community Facilities Plan. The community facilities include the wide range of "community systems" which were detailed in the inventory state of the process. Goals must be set relative to the levels of services the community hopes to provide for its present and future citizens.

These goals represent some of the most important decisions that the political leadership has to make because a commitment to extend or withhold the infrastructure from a given area is the most important factor in determining if it will develop and at what density or use. The relationship between a community facilities plan and the land use plan is obvious - if a community has determined that certain areas are environmentally sensitive, or that the timing of development is well into the future, it should withhold the extension of utilities and services which would "prime" those areas and make development the only economically viable alternative. By the same token, land areas judged to be appropriate and desirable for the community's needs must be scheduled to receive those utilities and services that make development possible. This is often a hard decision to make and in some cases, such as schools, the decision may rest with another special district or be controlled by state rather than local legislation. In these cases, the community needs to rely on other planning tools to accomplish its goals.

C) Thoroughfare or Transportation Plan. For a number of years, transportation planning has focused heavily on the prediction of future transportation needs and volumes through the development of empirical relationships between traffic and land use. Formulas have been used to estimate the traffic generating potential of various sections of the planning area. Such planning involves the analysis of traffic surveys or actual counts of the volume, type and direction of traffic flows; origin and destination surveys which, through interviews, obtain information about where people from specific areas must travel for shopping, work, school, recreation and services; and data surveys dealing with such variables as the number of vehicles per dwelling, income, residential density and distance to the various traffic generators such as places of work, shopping or recreation. Through these analyses, it is possible to produce a series of "desire" lines—where people are and where they need to go— from which transportation needs may be predicted.

Much of this planning has been done at a regional scale since core cities traditionally exert such great influence, due to concentrations of employment and shopping, on the travel patterns of the region's citizens. Traditionally, the greatest emphasis has been placed on auto travel since this was the favored mode of transportation in most metropolitan areas and the federal government was heavily involved in highway construction. Recent events such as the energy crunch, the flight of manufacturing industries to highly scattered suburban locations and slackening federal interest in new highways have prompted more interest in the mass transit forms

of moving people and goods. Whatever the focus may be, the most important factor to consider in transportation planning is its close relationship to land use planning—they are mutually dependent.

D) Capital Improvement Program. There was a time, not too long ago, when the preparation of a capital improvements program was not a terribly difficult job. As one of the final elements of a community's *comprehensive plan*, the program draws together all the various elements in the inventory and goal establishment stages of planning and programs the physical improvements which will be needed and which can be paid for over a fixed period of time called the *planning period*. Any study of a community's physical requirements will likely turn up a large shopping list of desirable facilities. Governmental department heads, the general public, developers, land owners, businesses, industries, schools and speculators all have specific projects which, for their own purposes and intents, are highly desirable if not outright requirements. Few of these special interest groups, however, have the desire or capability to view the needs of the entire community, to weigh those needs against the funds which might be available, and to establish priorities based on what ultimately appears to be best for all. This is what the capital improvement program is all about. The planning department, as generalists working outside of the political arena, usually has responsibility for the capital improvement program and takes the heat for priorities which, often, please no one and, as a consequence, may have little chance to be a working document for governmental decisions. Recently the courts have also entered the process and mandated the construction of certain facilities or the provision of specific services regardless of the community's ability to generate taxes. In such cases, the courts have become part of the priority establishment process.

E) Housing Element. National, state and local housing objectives have as their highest priority *the goal of a decent home in a suitable living environment for every American family*. The desirability of such a goal cannot be doubted—its achievement, however, is dependent upon an array of private and governmental interactions, complex financial situations, economic conditions and related social decisions over which no single agency or governmental unit has total control or influence.

Added to the complexity of the housing problems are a large number of uncoordinated activities on the part of individuals, agencies, nonprofit corporations, and governmental units which, though not directly associated with housing as shelter, do influence the location, availability, price and provision of services to housing units. Such activities include decisions to make or withhold infrastructure investments (streets, water, sewer), land use changes, highway locations, mass transit routing, open-space or recreation facilities, the development and location of shopping areas and the location of personal services.

A third facet of the problem of providing decent housing is attitudinal blocks to the attainment of housing goals. These include the indirect influences such as socioeconomic factors (increased income, higher skills level and better education contribute to the ability to afford quality housing) and direct influences such as unwillingness to assimilate all economic level and housing types into a community.

The housing element is intended to address these issues through a systematic investigation and inventory of existing housing and an analysis of present and future needs. In order to bring the multi-faceted housing activity into some focus, and to ensure that housing plans are cognizant of local, regional and state planning efforts, the study usually makes a complete inventory, catalog and analysis of the current planning efforts of all levels of government. These plans provide the basic framework, policies and priorities within which the housing element is designed. Through this approach a housing element which relates to and is coordinated with land use, utility, transportation and other physical and local planning and/or policy programs is established.

An inventory of existing housing conditions is a second step in the development of a viable housing element. What is the present situation in terms of number, condition and demand for housing? Does standard housing exist and if so, where? What factors contribute to blight and are these factors external or internal? All these are questions which a community must ask itself and which must be honestly answered if housing goals are to be achieved.

Once a complete inventory of past planning and existing conditions is available, it becomes necessary to: 1) determine housing policies in relation to existing regional policies, land use controls and other implementation devices at all levels of government; 2) recommend changes in developmental controls if they are a cause of housing discrimination; and 3) develop a checklist method to determine if housing is being developed in accord with established land use and land capability design.

These plans, when complete or in summary form as a single document, are commonly referred to as the *comprehensive plan*.

III. Implementation Stage

The implementation or accomplishment stage is that time within the planning program devoted to the development of tools which will provide the means to carry out the plan. Many communities, because of the press of development or impending unpopular land use changes, become involved with the adoption of implementation tools without developing or even considering the development of a comprehensive plan. This is akin to constructing the plumbing before the house plans are selected. It is also extremely difficult to change some of the implementation tools to fit a later adopted comprehensive plan since the tools are tangible and the plan is not.

While there is a wide range of regulations, programs and codes which may be considered as planning tools, most communities do well to administer and enforce the six types discussed in this section.

A) Policy Statements. These are "up-front" statements of how the community intends to carry out its planning program. Generally they are gleaned from the goal stage planning studies, cleaned of jargon and presented as specific (rather than generalized) statements of what the community intends to do to bring the findings of the comprehensive plan to fruition. Gathered together into a single document they provide devel-

opers and the citizens in general with sound knowledge of governmental land use policies. Policies can be as simple as a statement that the community will not permit urban development in flood plains or the rationale for avoiding strip commercial development and encouraging commercial complexes.

The following is an example of policies relating to commercial uses taken from a statement adopted by a California community.

Commercial Uses

- New neighborhood commercial centers should be developed at strategic locations related to the areas they are intended to serve.
- Centers should be located one to two miles apart, preferably at or near the intersection of major highways.
- Stripping along highways for commercial uses should be discouraged.
- Zoning for commercial centers should be established only when the need for commercial uses is duly evidenced by increased population or purchasing power and the imminence of construction.
- Prior to the establishment of zoning for commercial centers, road rights-of-way should be of sufficient width to ensure adequate circulation in the vicinity.

A clear statement of this nature serves not only as a guideline for government decision makers but alerts developers and citizens to the ground rules which will be followed.

B) Subdivision Regulations. Subdivision regulations are local laws that specify standards to be followed in laying out new building lots and streets; designate site improvements such as sewer and water lines and street pavement standards; and require conformance to the comprehensive plans for streets, schools drainage, public facilities and open space. Subdivision regulations implement those sections of the plan which call for safe street design, protection of natural drainage channels and the preservation of school and park sites. The primary objective of these laws is to provide maximum livability for residents and ensure that the cost of subdivision development does not fall on the public in general.

In order to accomplish this objective, subdivision regulations should establish standards which, at a minimum, ensure that new subdivisions:

- Conform to development plans and zoning
- Are not located on lands or soils incapable or unsuited to development
- Have street systems that enhance the proposed uses and are designed to acceptable planning practices
- Contain streets and connections that bear a direct relationship to the official thoroughfare plan (location, width, right-of-way and grade)
- Provide for curbs, gutters, storm sewers and sidewalks where necessary for proper drainage and safety
- Meet approved design standards for blocks and lots within blocks

- Establish easements of a suitable width for utilities, storm drainage and sanitary structures
- Contain properly installed water and sanitary sewers which are of a size and design suitable to serve the area to be subdivided and tie in with surrounding properties
- Provide public open space in accord with the comprehensive plan
- Conform to engineering specifications for the construction of improvements

The regulations must, naturally, contain an administrative and procedural format along with definitions and platting and recording requirements and may contain special development requirements (PUD, deed-out, hill-side, large lot) as well. The ability of local governments to adopt and enforce subdivision regulations is granted by the state and the enabling legislation must be understood and followed in developing, adopting and enforcing this land use tool.

C) Zoning. Zoning ordinances or resolutions are local laws governing land use. They determine the kind of use, such as for homes, apartments, business or manufacturing; the arrangement of structures on the lot; the intensity of use or the density of living or working populations; and required supporting facilities such as off-street parking. Zoning laws encourage land use that conforms to the comprehensive plan. As in the case of subdivision regulations, local zoning is permitted and regulated by state enabling legislation and is grouped, generally, under the health, safety and general welfare section of the codes. Zoning is a tool that both protects people and guides growth in the directions indicated by the land use plan. Under the protection aspects, zoning may be used to ensure the orderly and harmonious development of land uses within the community, prevent overcrowding, promote an environment beneficial to health, prevent traffic congestion, promote the optimum use of sites, and prevent conflicting uses of land on neighboring properties. Density, height and space between buildings and set backs are also important safety regulations that are part of zoning laws. The "growth directional" facet of zoning is established by the community's ability to designate the use of land and building in each zoning district and the location of those districts.

Although the number and complexity of zoning districts will depend on the size, character and goals of a community, zoning will normally be divided into three categories.

1) Residential zoning is used to control housing and population concentrations and is usually subdivided into at least three classes: single family, two family and multi-family.

2) Commercial zoning is designed to regulate business concentrations and may be subdivided into many classes such as: neighborhood business (generally limited to "convenience" retail and service outlets which should be located near residential concentrations), community business (finance, banking, retail establishments and service shops which are classified as "shop-per" goods types and require competitive concentrations and large parking areas), and central business districts (generally reserved for the core area of communities which require a wide range of business, government,

entertainment and cultural activities).

3) Industrial zoning is used to control the location of manufacturing concerns and, at a minimum, is further subdivided into light and heavy industrial categories. The distinguishing factor between the two is that heavy industries usually have heavy traffic demands or emit smoke, noise, odor, light, vibrations or other disrupting elements from the facility.

Examples of how zoning districts may be geared to the character of a community are shown in Chart 2. This chart represents districts which may be appropriate in rural, suburban and urban communities. A community which contains all three of these characteristics could, conceivably, incorporate the full range of districts suggested in these charts, but not all communities will necessarily require all of these districts.

Some communities attempt to use zoning laws to control aspects of development over which they have no authority. Zoning limitations are generally spelled out in the state enabling legislation and/or subsequent court cases. Zoning is not intended to control architectural style, the cost of buildings, type of materials, color or any number of personal preferences. Neither is it intended as a device to ensure a uniform economic status of inhabitants or to replace regulatory authority of another, higher governmental agency which has preempted the right to regulate. In Ohio rural zoning legislation, as an example, agriculture and public utilities are specifically exempted from control by local zoning.

D) Capital Budget. The capital budget is a short term budget (four or five years) which is geared to revenues and expenditures required to implement the Capital Improvements Program. The budget transforms the goals of the program into action by setting aside a portion of or all the funds required for capital improvements over the term of the budget. Because of the unpredictable nature of revenues and expenditures, the budget is short term and subject to reevaluation yearly. Nevertheless, it is an important planning tool for the government entity and allows maximum citizen insight to government intentions.

E) Community Development Programs. Many communities undertake a wide range of neighborhood renewal, housing rehabilitation, utility extensions, open space and recreation, and drainage programs with federal and sometimes state assistance. A surprising number of communities write such individual programs without consulting a comprehensive plan or without considering the overall reaction that results from a major governmental action of this nature.

The physical principal of action and equal reaction is just as applicable in land use as it is in nature and grants should be sought within the context of the community's needs as expressed in its goals establishment process. If community development programs are to be an effective planning tool they must relate and conform to the rest of the planning program.

F) Physical Development Codes. If a community wishes to ensure the quality of its new construction, existing housing, environment or a number of other physical conditions there are codes which may be adopted to regulate each specific area of concern.

Most communities are familiar with building codes which establish

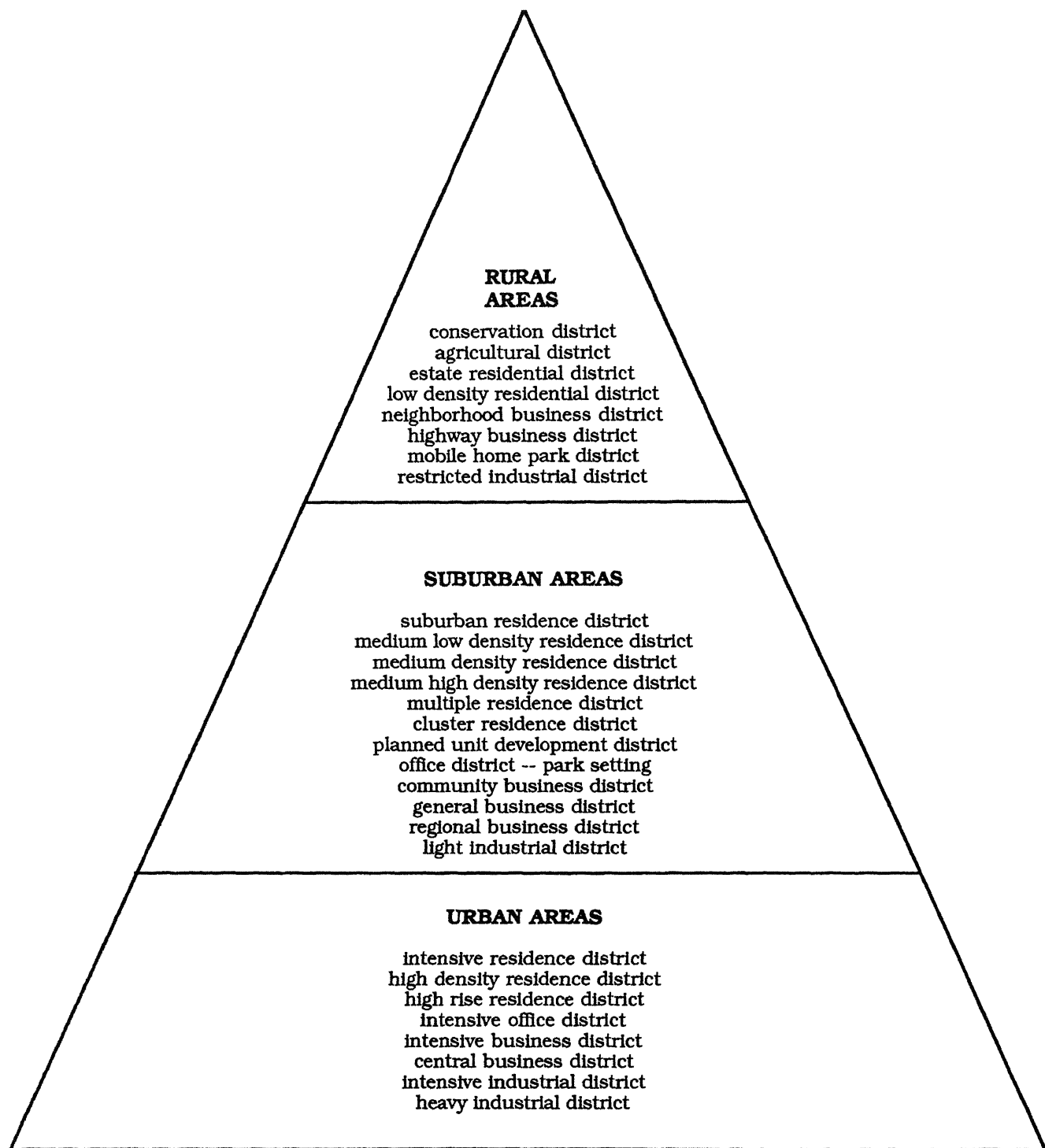


Figure 2: Conventional Zoning Districts

minimum material and construction standards for new structures. Together with a system of permits and inspections, they allow the community to ensure safety and minimum quality in buildings. Electrical and plumbing codes fall into this same general category.

Housing codes, on the other hand, set minimum standards of livability for all housing, new or old. They are concerned with such safety and health features as adequate light, ventilation, pest control, water, heat and space. Housing codes also require a system of permits and inspections and have a direct relationship to the housing element of the *comprehensive plan*.

Sediment and erosion control regulations are important planning tools for most areas. Their purpose is to regulate earth disturbing activities in order to control sediment pollution caused by accelerated soil erosion. Almost any land development activity causes accelerated water runoff and increases erosion potential both during and after construction. In the past, the general practice was to get water off the developed area as quickly as possible with little regard for downstream ramifications. The code establishes practices and techniques for sediment control such as seeding, retention, friction control, induced infiltration, detention and a large number of other measures and allows the developer to select the most practical, acceptable method. These regulations are sometimes made a part of subdivision regulations but since they must apply to all earth moving activity (excepting agriculture and normal landscaping), regardless of the involvement of subdivision activity, they are often "free standing" regulations. Close coordination with the platting authority is important for enforcement.

Although this is not an exhaustive listing of planning tools, it is representative of the types of regulations, ordinances and codes that can be used to accomplish the goals established in the planning program.

IV. Conclusion

The planning program described herein may seem highly involved and complex. Many smaller communities may feel that they do not have the means to obtain professional advice to institute such a program. While a professional planner trained in the art of land planning techniques is extremely helpful, concerned citizens working in consort with public officials can develop an effective program. It is extremely important, however, to keep in mind that planning is a process involving at least three important related steps and that the plan is a living, dynamic document subject to change. The framers of the plan must obtain reliable data for analysis, formulate realistic goals, adopt the proper tools to achieve those goals, and continually evaluate the program to determine if previous assumptions were correct.

AN INTRODUCTION TO OHIO ZONING

Harry M. Welsh

The following is a summary of legal principles that apply to some of the more common problems which arise in the enactment, administration and enforcement of zoning by local officials in Ohio. It is not intended to give legal advice concerning a specific problem but rather is designed to: 1) provide a framework to analyze a problem; 2) provide the general legal principles to guide this analysis; and 3) provide citations to some basic legal authorities where research can begin.

The goal of this paper is to assist local officials to make zoning decisions that are legally correct. To achieve that goal, a series of principles are listed that will serve as a starting point in resolving a problem. Keeping in mind always the ancient maxim, "All generalities are false, including this one," they are intended only as a means to begin the problem analysis and as a starting point for more thorough research.

Defining the Problem

Zoning problems, like most legal matters, involve facts: who, what, where, when, how, and why? Often these facts are intricate, reflecting the complexity of contemporary society. Before the proper legal principles can be applied, the surrounding facts and circumstances must be fully understood. A slight change in the facts can result in a completely different outcome in any legal proceeding. Frequently, the persons involved, whether the landowner who proposes a land use or the neighbors who object to it, or even the officials in charge of operating the system, do not grasp the true nature of the problem. All landowners often know is that they want to do something and they have been told they must get some sort of zoning permit from the local unit of government. Neighboring property owners or other residents of the community may learn that someone is proposing to do something that they don't think should be allowed.

The local officials charged with the administration of the zoning system frequently find themselves caught in the middle of this dispute. In order to resolve it, the officials must first understand the facts, then require the applicant to take the proper steps to comply with the zoning regulations. While the officials represent all the people and must remain totally objective in the administration of the zoning system, they will often be called upon to advise and even assist both applicants and opponents. It is best to avoid advising either side and to refer the parties to their own legal counsel.

The first step in the resolution of any zoning problem is to articulate the problem. Determine if this is really a zoning issue and what the

applicant must do to achieve the desired goal. Then, see that the functions required of the local unit of government are conducted in accordance with the law. At the outset it must be remembered that zoning deals with governmental control of the use of land to promote public health, safety, morals, and welfare. While derived from the police power of the state, it cannot solve every nuisance problem or backyard dispute that arises in the community. It cannot be used to make people pleasant or cooperative, nor can it be used to prevent the eccentric or foolish from carrying out their plans simply because the officials or other residents would rather they did not. In addition, it must never be forgotten that zoning is law. It is the use of government power to control the use of land and like all governmental powers in our system, it is subject to both substantive and procedural limitations, meaning that some things cannot be done at all and others can only be done in a certain manner.

Even when the problem is understood and the machinery of zoning operating properly, local officials cannot solve all zoning problems. Reasonable people can honestly differ as to what is best for the community and there is little prospect that you will deal only with reasonable people. Problems of this type must inevitably be resolved in the courts. However, all too frequently the courts spend much of their time in resolving procedural questions which could have been avoided or at least minimized if the local officials who first dealt with the problem had followed the correct legal procedures from the beginning. More importantly perhaps, in virtually all instances local officials will have made a substantive decision that is being challenged. The dispute then shifts in character from one between the opponents and the proponents to one between the local unit of government on one side and the original parties that lost on the other. The applicant granted a variance then becomes allied with the Board of Zoning Appeals against the opponents in the courtroom contest or the neighbors who opposed the rezone end up at the same counsel table with the attorney for Village Council who refused to grant it. It is fundamental, however, that local zoning is not automatically implemented. It is only through the courts that those who do not comply can be brought to account or the decision of the local unit of government be enforced. Thus, the continued viability of the local zoning system requires that decisions made by local officials be successfully enforced or defended.

Who May Adopt and Enforce Zoning

1. Zoning in Ohio is local law, adopted by counties, municipal corporations or townships. Chapters 303, 519, 713, Revised Code. Article XVIII, Section 3, Ohio Constitution.
2. State statutory control upon local zoning varies from only a few procedural limitations upon municipalities to substantial limitations on townships and counties.
3. A municipality's authority to zone is derived from the police power and is broad in scope. County and township zoning authority is statutory in nature and is restricted to the authority expressly granted. *Garcia v. Siffrin*, 63 Ohio St.2d 259 (1980); *Crist v. True*, 39 Ohio App.2d 11 (1974).

4. A court decision interpreting a municipal ordinance may not be applicable to a county or township zoning resolution because of the difference in the scope of the zoning power. Provisions in a municipal charter may also affect zoning procedure. Slight differences in language between ordinances may also be significant.

5. While the power to enact zoning is vested in government, private citizens may have the standing to initiate litigation to enforce zoning where the subdivision fails or refuses to do so. Section 303.24, Section 519.24, Section 713.13, Revised Code.

6. County and township zoning is required by statute to be enacted in accordance with a comprehensive plan. Section 303.02, Section 519.02, Revised Code.

7. County and township zoning is intended to promote the general health, safety and morals. The absence of the term "welfare" from these statutes is curious but may not impose a substantive limitation.

What Zoning Controls

1. Statutory zoning systems, township, Section 519.02, Revised Code, and county, Section 303.02, Revised Code, authorize zoning to regulate location, height, bulk, number of stories, and size of buildings, and other structures, including tents, cabins, trailer coaches, percentage of lot areas that may be occupied, setback building lines, sizes of yards, courts and other open spaces, density of population, the uses of buildings and other structures including tents, cabins and trailer coaches, and the use of land for trade, industry, residence, recreation or other purposes.

2. Planned unit developments are also allowed and may be regulated. Section 303.022, Section 519.021, Revised Code.

3. Sediment and storm water runoff may be controlled through zoning regulations. 85 OAG 053.

4. Surface and strip mining may be regulated so long as the regulations do not conflict directly with state statutes and there is no finding that surface mining creates a substantial risk to the public health, safety, morals, or welfare. 81 OAG 065.

5. Counties and townships are severely restricted in their authority to regulate the production of gas or oil. Municipalities have broader authority in this area. Section 1509.39, Revised Code.

6. Hazardous waste disposal facilities are not subject to local zoning control. *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44 (1982). Solid waste disposal may be subject to township control. *Hulligan v. Board of Zoning Appeals*, 59 Ohio App. 2d 162 (1978) and certainly is subject to municipal control.

7. Outdoor advertising cannot be excluded from certain districts in townships or counties. Section 303.20, Section 519.20, Revised Code. Zoning ordinances may regulate some aspects of signs subject to the constitutional right of freedom of speech. *Metro-Media, Inc. v. Sand Diego*, 69 L.Ed.2d 800 (1981). A sign ordinance which restricts signs or bill-

boards to advertising only the business conducted on the premises where the sign is located is invalid. *Norton Outdoor Advertising, Inc. v. Village of Arlington Heights*, 69 Ohio St.2d 539 (1982).

8. Neither counties nor townships may regulate, exclude or require permits for: a) agriculture uses and buildings; b) public utilities or railroads; c) sale of alcoholic beverages in certain districts; d) oil or natural gas for onpremises use; e) farm markets with some exceptions. Section 303.21, Section 519.21, Revised Code.

9. Satellite dishes for personal use are not a public utility for purposes of prohibiting regulation under Section 519.21, Revised Code. 85 OAG 079. Pending federal regulations may affect local authority to regulate these devices.

10. Certain land uses such as trailer parks can be excluded completely from a subdivision by appropriate legislative action. *Columbiana v. Keister*, 50 Ohio App.3d 81 (1981).

Enactment and Amendment of Zoning Regulations

1. A zoning ordinance or resolution is a local law and must be enacted by the legislative authority: municipal council, county commissioners, and township trustees in accordance with the procedure set by statute or municipal charter. If the zoning ordinance is not enacted correctly, it cannot be enforced. In any prosecution or action the claim that it was not properly enacted may be raised as a defense.

2. Zoning regulations are ordinarily composed of two documents, the text and the map. Each should refer specifically to the other by title and date and the original copy of each should be signed and carefully preserved.

3. In a statutory plan municipality the entire text of the zoning ordinance and the entire map must be published once a week for two consecutive weeks. Effective May 22, 1986, a succinct summary may be published instead. (Am. S.B. 93) Sections 731.21 and 731.22, Revised Code.

4. A public hearing must be held before a municipal zoning ordinance or amendment may be enacted. Public notice by publication and, in some cases, first class mail is mandatory. Section 712.12, Revised Code.

5. No amendment to a municipal zoning ordinance becomes effective unless it is first submitted to the municipal planning commission for a recommendation. That body has thirty (30) days in which to make its recommendation. Section 713.10, Revised Code.

6. Municipal charters may create a different procedure for zoning enactment or amendment; in the absence of specific charter provisions, state statutes control.

7. County and township amendment procedures are governed by very complex statutory procedures. Section 303.12, Section 519.12, Revised Code. The hearings, notices and time limits of these statutes are manda-

tory. Even slight deviations can invalidate the enactment or amendment.

8. Initial adoption of county or township zoning requires voter approval. Section 303.11, Section 519.11, Revised Code.

9. County and township zoning amendments are subject to challenge by referendum. Section 303.12(H), Section 519.12(H), Revised Code. Municipal zoning amendments may also be subject to a referendum, Sections 731.28 to 731.41, Revised Code, unless the ordinance is passed as an emergency. Section 731.30, Revised Code.

10. Zoning amendments, except municipal emergency ordinances, go into effect thirty (30) days after enactment unless a valid referendum is filed.

11. There are no post-adoption publication requirements for county or township zoning resolutions or amendments to existing resolutions.

Zoning Inspector

1. The zoning inspector is an administrative official charged with the duty of reviewing applications for zoning permits and investigating violations of the zoning regulations.

2. Township zoning inspectors must post a bond of not less than one nor more than five thousand dollars as fixed by the trustees to guarantee the faithful performance of their official duties. Section 519.161, Revised Code.

3. A county zoning inspector is appointed by the county commissioners unless the county has a county building inspector in which case he or she shall serve as zoning inspector. Section 303.16, Revised Code. No bond is required by statute.

4. A municipal zoning inspector is a position created by the zoning ordinance and not by statute. The duties may be assigned to another municipal official subject always to any express charter provisions. No bond is required by statute.

5. The duties of the zoning inspector are ministerial, not discretionary. A zoning inspector may not refuse to issue a permit if the proposed use is permitted under the terms of the ordinance or resolution. A refusal of a permit must be based upon the language of the zoning ordinance or resolution and not outside factors.

6. The decision of a township or county zoning inspector is appealable to the Board of Zoning Appeals. Section 303.15, Section 519.14(A), Revised Code. Similar appellate procedures are usually provided in municipal zoning ordinances and must be used before resorting to the courts. Absent such a procedure in the ordinance, the zoning inspector's decision can be reviewed by mandamus or declaratory judgment proceedings.

7. Generally the zoning inspector will be charged with keeping records of permits issued or denied, keeping the official zoning map current, handling the administrative aspects of rezones and requests for

variances, signing criminal complaints to prosecute violators, and investigating allegations that a violation of the zoning has occurred.

8. A zoning inspector has no right to enter private property without consent to search for violations. Absent consent of the owner or occupant, a search warrant is needed. Unauthorized entry can result in suppression of evidence or even give rise to a suit against the inspector and the subdivision for trespass or civil rights violations. *Camera v. Municipal Court*, 387 U.S. 523 (1967); *See v. City of Seattle*, 387 U.S. 541 (1967).

Planning or Zoning Commission

1. A planning or zoning commission is a body that serves primarily in an advisory capacity.

2. Its membership is set by statute. Section 713.01, Revised Code, for statutory plan municipalities; Section 519.04, Revised Code, for townships; Section 303.02, Revised Code, for counties. A charter municipality may set its own membership requirements.

3. As part of the rezoning process, the proposed amendment must be submitted to the planning or zoning commission for its approval, disapproval or suggestions. Section 313.10, Section 519.12, Section 303.12, Revised Code.

4. An amendment to the zoning which differs from the planning commission's recommendation may be adopted only by a three-fourths vote of the municipal council (Section 713.12, Revised Code) or a unanimous vote of township trustees (Section 519.12(H), Revised Code) or county commissioners (Section 303.12(H), Revised Code.)

5. The recommendation of a planning or zoning commission with respect to rezones is advisory in nature. It may not be appealed to Common Pleas Court under Chapter 2506, Revised Code.

6. In a statutory plan municipal corporation, the power to hear appeals from decisions of the zoning inspector to permit special exceptions or variances or to otherwise administer the regulations may be delegated by ordinance to the planning commission. Section 713.11, Revised Code. A charter municipality may do the same. In townships and counties these powers must be exercised by a separate board of zoning appeals. Section 519.14, Section 303.14, Revised Code.

7. A planning or zoning commission also serves in an advisory capacity to the trustees, commissioners or municipal council, but has no authority to require or prohibit any zoning change. That power lies in the elected officials. It may, however, initiate changes by recommending them to the trustees, commissioners or municipal council.

8. Municipal planning commissions also serve as the platting commission, can make maps or plans for the development of the municipality and certain areas beyond its borders, and have some limited control over public projects. Section 713.02, Section 713.03, Revised Code.

Board of Zoning Appeals

1. A board of zoning appeals is a quasi-judicial body whose duties are imposed by statute for counties and townships and by charter or ordinance for municipalities. It serves the functions of a court without being a court.

2. Generally, among these duties are: 1) hearing appeals from decisions of the zoning inspector; 2) granting conditional zoning permits; and 3) granting variances.

3. A board of zoning appeals, as a quasi-judicial body, must base its decision on the evidence presented to it. Absent municipal charter or ordinance to the contrary, an appeal from the board of zoning appeals is to the Court of Common Pleas under Chapter 2506, Revised Code. Neither county commissioners nor township trustees may review its decisions.

4. Hearings before any body of a local unit of government which involve the determination of individual's rights and allow an appeal to Common Pleas Court should comply with all the elements of the Local Government Administrative Appeal Act, Chapter 2506. These include receiving all testimony under oath, the right to counsel, to cross examine witnesses, offer or proffer guidance, power to subpoena witnesses, and the right to have a statement of conclusions of fact supporting the board's decision.

5. The appeal to Common Pleas Court is limited to a hearing on the record unless the appellant can show a failure to follow proper procedure in which case additional evidence is admitted in court.

6. Notice of appeal from decisions of boards of zoning appeals must be filed with the board within ten days of the time the decision is made. Section 2505.07, Revised Code.

7. Variances are of two types, area and use. An area variance allows a deviation from the literal provision of the resolution or ordinance with respect to setbacks, width, area or height requirements, and similar provisions. A use variance permits a use not specially allowed in the district.

8. The standard for granting either type of a variance in counties or townships is specified by statute: 1) not contrary to the public interest; 2) where owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship; 3) the spirit of the resolution will be preserved; and 4) substantial justice will be done. Section 303.14(B), Section 519.14(B), Revised Code.

9. With respect to municipal zoning, the Supreme Court has held that an area variance may be granted if the applicant can show practical difficulties. *Kisil v. Sandusky*, 12 Ohio St.3d 30 (1984). Seven factors to be considered are listed in *Duncan v. Middlefield*, 23 Ohio St.3d 83 (1986).

10. Use variances may be granted by a municipality only upon the showing of special or unnecessary hardship by the applicant. *Consolidated Mgmt, Inc. v. Cleveland*, 6 Ohio St.3d 238 (1983).

11. The granting of a use variance, so long as it is merely the execution of powers granted under existing law and not a disguised rezone, is not an

unlawful delegation of legislative power. *Schomaeker v. First National Bank*, 66 Ohio St.2d 304 (1981).

12. Conditional zoning permits may be granted by county or township boards of appeal if such certificates for specific uses are provided for in the zoning resolution. Section 303.14(C), Section 519.14(C), Revised Code.

13. Conditional uses are permitted uses provided the applicant can meet legislatively prescribed standards and conditions. If the conditions are not met, the permit may not be issued. *Gerzeny v. Richfield Township*, 62 Ohio St. 2d 339 (1980). If the standards listed in the legislation are not sufficient to restrict unlimited or arbitrary discretion by the board, the conditional permit is invalid. *Nunamaker v. Board of Zoning Appeals*, 2 Ohio St.3d 115 (182).

Zoning Litigation

1. All subdivisions that have adopted zoning may seek an injunction from the Court of Common Pleas to enjoin a violation of their ordinance or resolution. Section 303.24, Section 519.24, Section 713.12, Revised Code.

2. In addition, adjacent or neighboring property owners who would be especially damaged by the violation have standing to seek injunctions to prevent or eliminate zoning violations without the participation of the subdivision. Section 303.24, Section 519.24, Section 713.13, Revised Code.

3. Common Pleas Courts are authorized to issue three types of injunctions: temporary restraining orders issued without notice or hearing which are valid for only fourteen (14) days and are renewable once; preliminary injunctions which are intended to maintain the status quo while the suit is pending; and permanent injunctions which last indefinitely. Civil Rule 65.

4. By statute, violations of county or township resolutions are made minor misdemeanors, i.e., a crime prosecuted by affidavit in the municipal or county court having jurisdiction over the subdivision and resulting, upon conviction, in a maximum fine of \$100.00. Section 303.23, Section 303.99, Section 519.23, Section 519.99, Revised Code. Municipal ordinances generally also make violations a misdemeanor and may impose a more serious penalty including imprisonment in a county jail or workhouse.

5. In those counties with municipal courts the duty to prosecute misdemeanor violations rests with the village solicitor, city law director or similar chief legal officer for the municipality. Section 1901.34, Revised Code. For townships, the city solicitor of the city whose municipal court has jurisdiction over the township must prosecute these cases. 69 OAG 095.

6. In those counties with county courts, the prosecuting attorney of the county must prosecute criminal cases arising in the unincorporated area of the county.

7. Municipal zoning violations may also be prosecuted in Mayor's

Courts by the village solicitor, city law director or similar chief legal officer. Section 1905.01, Revised Code.

8. Special rules assigning the duty to prosecute misdemeanors apply to Auglaize, Crawford, Hamilton, Hocking, Jackson, Madison, Portage, and Wayne County Municipal Courts and the Port Clinton Municipal Court. Section 1901.34, Revised Code.

9. Actions may be brought by or against a subdivision to determine the rights of a party under a zoning ordinance or resolution under the Declaratory Judgment Act. Chapter 2721, Revised Code. This action is filed in Common Pleas Court and the court must determine any question of construction or validity of the ordinance or resolution. This remedy is frequently used to challenge the constitutionality of a zoning resolution.

10. Certain extraordinary legal actions are occasionally filed in zoning disputes such as mandamus, Chapter 2731, Revised Code, to order a public official to do his or her duty, such as issue a zoning permit; or prohibition, to prohibit a lower court or a body such as a board of zoning appeals from exercising judicial or quasi-judicial power, e.g., holding a hearing on a variance. This latter remedy is available only from the Court of Appeals or Supreme Court. Constitution, Article IV, Sections 2 and 3.

11. Suits for damages against local subdivisions and claiming violations of Federal Civil Rights statutes have become increasingly common are 42 U.S.C. 1983 and 1985. The plaintiff's complaint will allege that under color of state law, the local officials perhaps in conspiracy with others, have deprived the landowner of rights granted by the Constitution or laws of the United States. Such cases may be filed in either state or federal courts. These cases can be financially devastating. Liability insurance policies should be carefully reviewed to be certain that coverage for this type of suit is provided. See *Shelton v. City of College Station*, 754 F.2d 1251, Rehearing 765 F.2d 456 (1985); *Cowart v. City of Ocala*, 478 F.Supp. 774 (1979).

12. The political subdivision tort liability statutes, Chapter 2744, impose some limited relief for damage actions under state law, but provide no protection against claimed violations of federal law.

Standards For Rezoning

1. Changing the use district in which a parcel of land lies or changing the text of the zoning ordinance or resolution is a legislative action. Only the legislative body, commissioners, trustees, or council can change the text or map.

2. A planning or zoning commission's recommendations are not controlling but a rezone contrary to their recommendation requires a unanimous decision in counties and townships and a three-fourths vote in statutory plan municipalities. Section 303.12, Section 519.12, Section 713.12, Revised Code.

3. The Courts will invalidate a decision to rezone or not to rezone only when they determine that the decision is so unreasonable as to be beyond fair debate. *Brown v. Cleveland*, 66 Ohio St.2d 93 (1981).

4. Spot zoning is a term used to describe a parcel of land which is zoned differently than the land surrounding it. While not invalid per se, a spot zone may be hard to justify on the basis of a reasonable relationship to the public welfare or comprehensive plan.

5. Both the aesthetics of the community and protection of real estate values may be taken into consideration in enacting or amending zoning. *Village of Hudson v. Albrecht, Inc.*, 9 Ohio St. 3d 69 (1984).

6. The burden of proof is upon one who challenges the validity or constitutionality of the zoning and there is a strong presumption that the legislative decision to rezone or not to rezone is valid. *Downing v. Cook*, 69 Ohio St.2d 149 (1982). *Mayfield-Dorsch, Inc. v. South Euclid*, 68 Ohio St.2d 156 (1981).

7. Regulations that render a parcel of land useless for any practical purpose go beyond the scope of the power to zone and become confiscation. Such zoning is invalid. *Negin v. Board of Bldg. and Zoning Appeals*, 69 Ohio St.2d 492 (1982).

8. Zoning regulations operate prospectively only. Existing uses which do not conform to the regulations must be permitted to continue until abandoned in accordance with statute. Section 30.19, Section 519.19, Section 713.15, Revised Code.

GENERAL ZONING PROCEDURES

Robert C. Schroeder

Zoning regulations are laws that affect private property within a dynamic and changing environment. In order to remain effective and ensure that the constitutional rights of private property owners are maintained, they must provide for change and provide a "safety valve" when peculiar or unusual conditions exist which do not allow strict compliance to the regulations.

Since zoning regulations are adopted under the legislative powers of local government, they can only be amended through a legislative procedure. Administrative actions such as zoning permits and conditional use permits are procedures specifically outlined within the text of the regulation. Finally, the "safety valve" requirement is provided through quasi-judicial actions such as appeals and variances by the board of Zoning Appeals. Zoning regulations must provide these procedures in order to be effective, fair and enforceable.

Zoning Amendments

The placement of property into one or more zoning district classifications is a legislative act which legally binds a property to a set of use and physical design requirements. Such requirements must reflect a fair and equitable system of regulation in order to remain valid. New conditions not addressed in the original zoning laws or in previous amendments will tend to make the laws cumbersome. They become either too restrictive or not restrictive enough when amendments are delayed.

The zoning amendment procedures established in Section 519.12 (Townships) and Section 713.12 (Municipalities) of the Ohio Revised Code allow local legislative authorities to amend their zoning laws upon recommendation by its Planning or Zoning Commission. However, these are only procedural requirements. There is no direction in the Code establishing why or whether a specific amendment should or should not be adopted. That question is left up to the local governing body and is based on local conditions.

Types of Amendments. There are two types of amendments. A periodic comprehensive amendment is designed to reflect new and changing conditions or technologies that affect the community. It usually involves the zoning resolution text, but may also include comprehensive map amendments. Some of the more recent concerns affecting local zoning are solar access protection, the flood insurance program, new water and sewer extensions, agricultural land preservation and rural residential estate development. The text amendment is usually initiated by the Township Zoning Commission or Municipal Planning Commission. It may also be

initiated by the Township Trustees or the Municipal Council, or by citizen initiative.

The second type is a specific amendment affecting a small number of properties. This type of amendment is usually requested because of a desired change in use by the property owner. It is usually based on a discrepancy in the current zoning or on changing land use patterns in the vicinity. Because it involves a specific property, it is normally initiated by the property owner.

Zoning Amendment Procedures: Zoning amendment procedures are established in the Ohio Revised Code. Figures 1 and 2 illustrate these required procedures in graphic form. The amendment process begins when an applicant files a petition with the local government. Applicants fall into several classes. They may be developers who have recently purchased or have fixed-term options to buy a parcel of land. They may be property owners who are contemplating selling a parcel of land upon rezoning. Applicants may also be homeowners who want to conduct a business use within their home. In each case the applicant will complete an application form and pay an application fee to cover the cost of public hearings and any staff time needed to analyze the requested change.

Information from Applicants. What kind of information should a local jurisdiction ask the rezoning applicant to provide? These are a number of items which are "musts" in reviewing rezoning requests:

- Name, address and telephone number of applicant.
- The present zoning district of the property for which rezoning is requested.
- The specific zoning district classification which is requested and a legal description of the property proposed for rezoning; Legal descriptions generally take three forms: metes and bounds; identification of the lot by street number; and blocks and lots in recorded tract subdivisions.
- Size: in acres or square feet.
- Proposed Use. While there is no way of compelling an applicant to install or conduct the use proposed in a general rezoning it is customary for the applicant to specify use. The nature of the proposed use is usually foremost in local elected officials' minds (as well as those of neighbors) when they consider the rezoning.
- Reasons for Support of Rezoning Request. Here the applicant must specify the rationale for the requested zoning change. This should be more than a simple statement of "Because it is needed" or "Because I want it." It is the responsibility of the applicant to justify the request, not the local government.
- A list of all property owners within a specified radius for legal notification.

Information Assembled by the Local Unit of Government. The assembly of certain information should be the responsibility of the local unit of government. This information is the kind to which the local government, rather than the applicant, has easy access. This information should include:

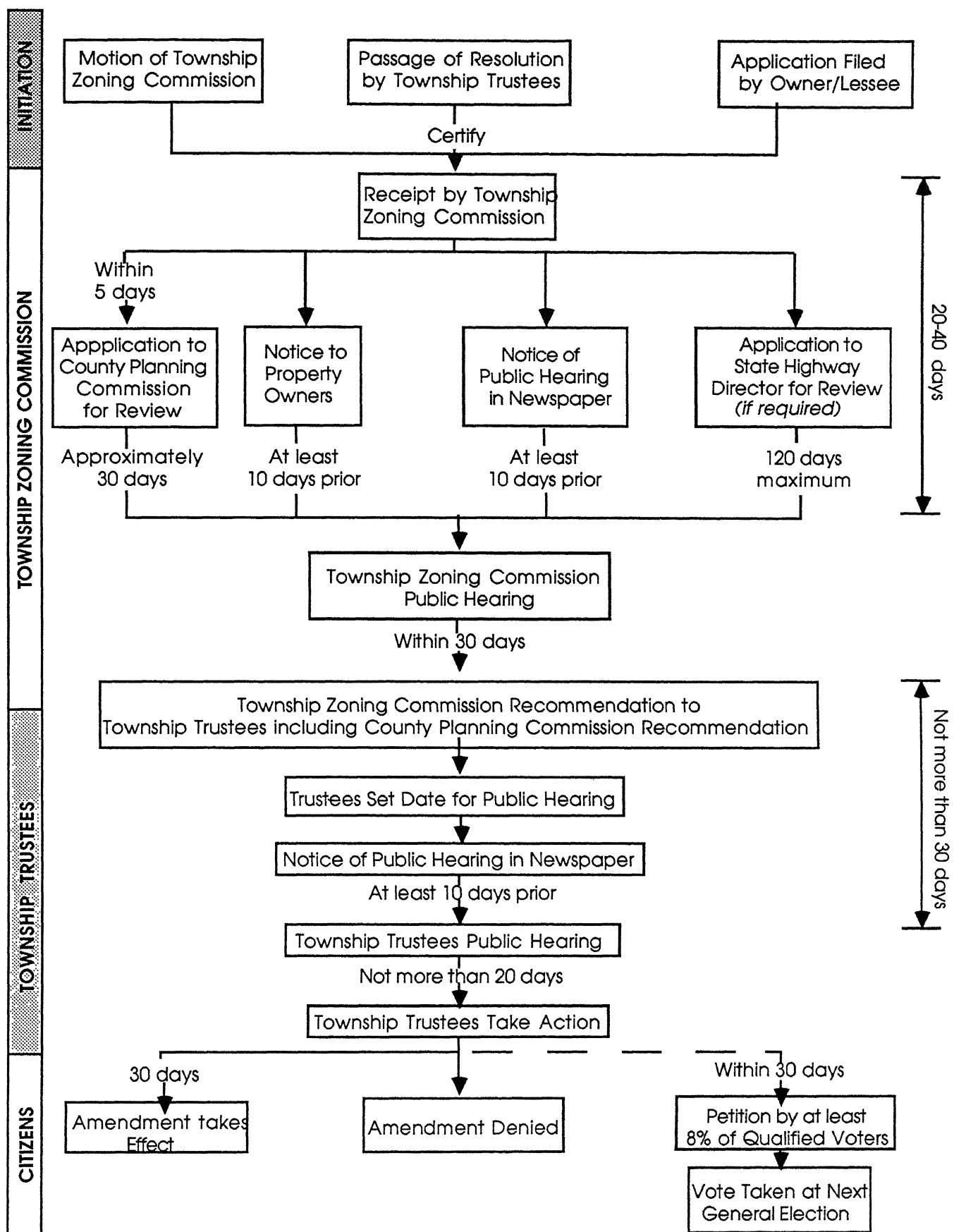


Figure 1: Procedure for Zoning District or Text Amendment of Township Zoning Resolution

ADDENDUM: Changes in the law (as of May 1988) are reflected in this revision of Figure 1.

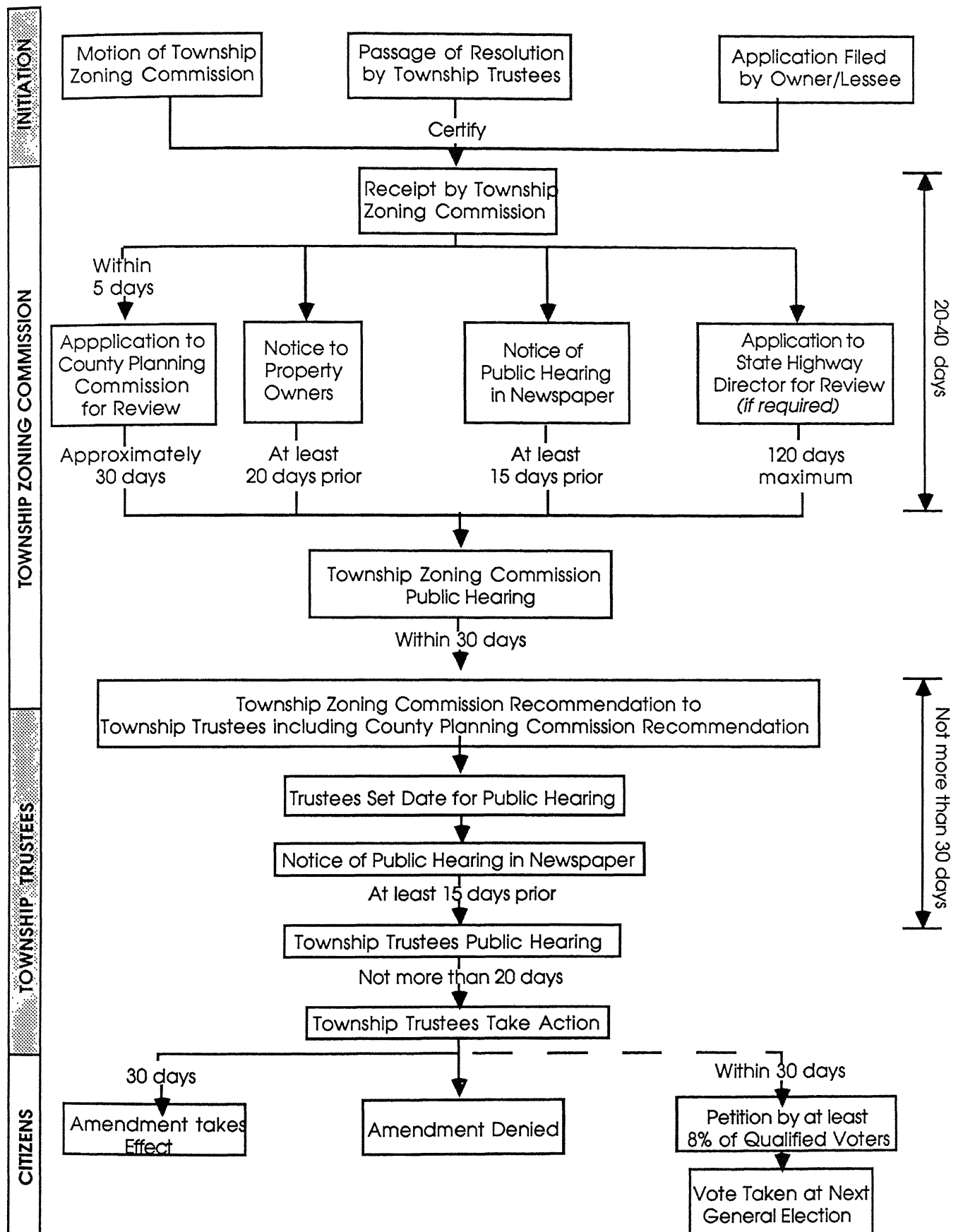


Figure 1: Procedure for Zoning District or Text Amendment of Township Zoning Resolution

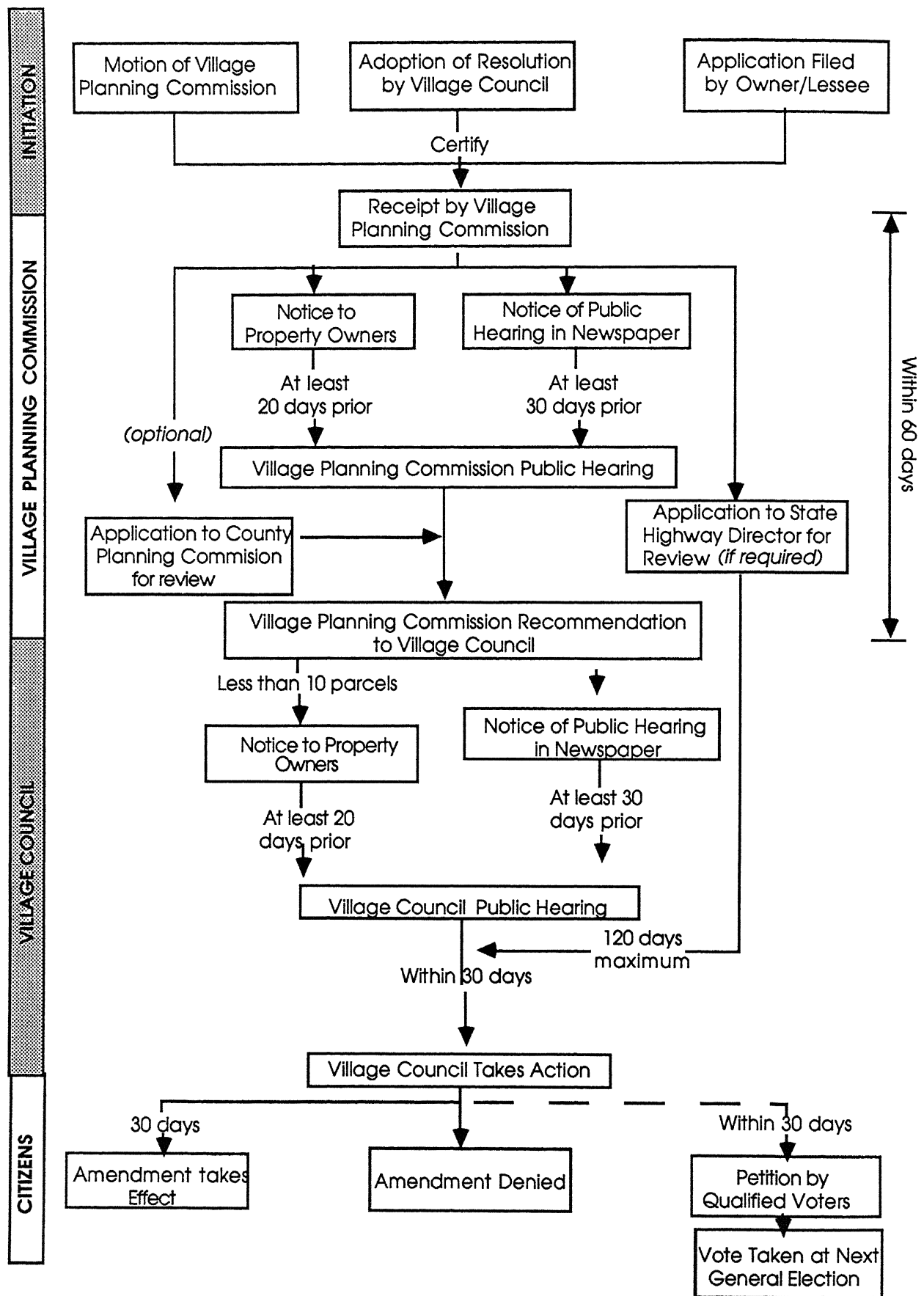


Figure 2: Procedure for Zoning District or Text Amendment of Municipal Zoning Ordinance

- **Existing Land Use.** Land use within 500 to 1,000 feet of the property should be identified.
- **A Record of Previous Decisions.** The property for which the rezoning is requested may have been the subject of a rezoning request in the past. There may have also been additional rezoning applications in the immediate vicinity of the property in question. The record of these decisions should be summarized.
- **Comprehensive Plan Summary.** The plan summary should identify what the plan recommends, and, most importantly, if the plan supports the requested zoning change.
- **Public Utilities.** Maps showing the size and location of water and sewer lines in relationship to the proposed rezoning should be prepared to indicate the degree of service available.
- **Soil Data.** Soil data is important and is available in soil surveys published by the U.S. Soil Conservation Service. Detailed soils maps can disclose potential problems such as those due to poor bearing strength, slow percolation rates which result in septic tank failure, shallow depth to bedrock, or persistent wetness, resulting in damp or flooded basements.
- **Slope.** Knowledge of the location of steep slopes and easily eroded soils permits an assessment of areas where development can be most economically undertaken and where disturbance of the natural environment will be minimal during site preparation.
- **Surrounding Zoning.** A map should be prepared showing the zoning pattern in the vicinity of the request.
- **Transportation.** Information should be provided on existing or proposed streets located near the property. Information should include street classification, state of repair, planned improvements to roadways and traffic data.
- **Flood Plain Information.** Flood hazard maps showing areas subject to inundation by the 100-year flood are available from both the U.S. Department of Housing and Urban Development, Federal Insurance Administration and local planning agencies.

Staff Report. Information submitted by the applicant and assembled by the local unit of government should be organized into a staff report. Responsibility for preparing the report should be that of the City Manager, Village Administrator, Staff Planner, Zoning Enforcement Officer, or the Regional Planning and Coordinating Commission. After an identification of all relevant facts and an analysis of the facts, the staff report should furnish a recommendation to the Municipal Planning Commission or the Township Zoning Commission.

The Public Hearing. A public hearing on a rezoning proposal should be organized to lead the Planning or Zoning Commission or the legislative body toward a decision. Its purpose is to receive pertinent information and opinions. It should not degenerate into an attempt to defend or attack the proposal. The products of a good hearing are answers to the

following:

- Does it define the issues upon which a decision will be made?
- Does the evidence have enough conceptual and factual basis to facilitate decision making?
- Does the proposal match the existing comprehensive plan? If not, was a sound reason for deviating from it established in the testimony?

Hearings must be conducted in a fashion that assures that all parties—proponents and opponents—are provided with an opportunity to be heard, to present and to rebut evidence. The public has a right to a record of the proceedings. The decision-making body has a responsibility to make a decision based on the findings that appear in the record, not as a result of any prehearing contact with decision makers. More discussion regarding the conduct of a hearing is presented later in this chapter.

The Decision. A decision on the application should be reached after the hearing is closed. If time does not permit deliberation on the same evening, the matter should be continued to a specific time and place for a decision. Promptness is important.

Although the Ohio Revised Code sets forth procedural requirements to follow for amending a zoning ordinance or zoning resolution, it is silent on what standards to use in making a decision on whether or not to grant the amendment. A change cannot be justified simply because certain people want it. It must be justified because it will benefit the public interest will benefit from it. It is the responsibility of the applicant to justify a request; not the Municipal Planning Commission or the Township Zoning Commission to justify why a request should not be granted.

In order to help Municipal Planning Commissions and Township Zoning Commissions to determine whether a proposed zoning amendment is appropriate, the following questions should be considered:

For adding additional uses to a zoning district classification:

- Is the proposed use already provided for elsewhere in the zoning regulations?
- Is the proposed use compatible with uses already permitted in that district, including those permitted by right and by conditional use permit?
- Does the proposed use relate well with the Future Land Use Plan? Assuming that the zoning district is in harmony with the land use plan, does the proposed use contribute to the character of development envisioned in the plan?
- Does the proposed use relate well with the spirit and intent of the zoning regulations, and with the objectives of the zoning district?
- Is the proposed use most appropriate in the district if permitted by conditional use permits?
- Is there a need to add the proposed use at all?

For changing or adding additional regulations or standards to a district or a use:

- Does the proposed rule, change, or addition help reinforce the Future Land Use Plan?
- Does the proposed rule, change, or addition follow the spirit and intent of the zoning regulations, and the objectives of the zoning district, or does it go excessively beyond the intent and objectives?
- What problems or issues is the change intended to address? Can they be resolved in another, more appropriate fashion outside of the zoning regulations? Is it a new response to new problems not addressed in the zoning regulations?

For zoning requests to change, create, extend or reduce a mapped zoning district:

- Is the use more appropriately handled as a conditional use in that district? Does the district already provide for this use as a conditional use? Where?
- Are there substantial reasons why the property cannot be reasonably used as zoned?
- Is the proposed zone change supported by the adopted Future Land Use Plan?
- Would the change of present district boundaries be consistent in relation to existing uses?
- Would the change severely impact traffic, public facilities and the natural characteristics of the area, or significantly change population density. Is the change consistent with the purposes for which the zoning regulations are adopted?
- Would the rezoning constitute a "spot zone," granting a special privilege to one land owner not available to others?
- Is the change contrary to the established land use pattern? Will it adversely affect property values?
- Has there been a change of conditions in the area supporting the rezoning?
- Are adequate sites available elsewhere to accommodate the proposed use?
- Is the proposed change out of scale with the projected need of the community?
- If the change is approved, what will be the probable effect on stimulating similar zoning requests in the vicinity? Would this secondary effect negatively impact community plans and public services?
- Is the proposed change precedent setting? Is the precedent good or bad?
- Is the proposed boundary appropriate?
- Was there a mistake in the original zoning classification?

- Is the proposed class of use appropriate at the proposed location?

For Any Amendment Request:

- What is the effect of the proposed amendment on the comprehensive planning of the entire community?
- What changes in community characteristics may take place because of the proposed change?
- What is the relative effectiveness or ineffectiveness of the present construction of the zoning regulations, and what specific improvement will the proposed change make?
- Does justification for a change exist? Has a change in conditions taken place since the original zoning, or has a mistake been made in the original zoning?
- Is the amendment designed to correct an improper situation or would it result merely in the granting of special privileges?
- Is an inappropriate precedent being set?
- Is the proposed change consistent with the intent and purpose of the zoning regulations?
- Is the change exclusionary?

If these factors are carefully considered and a sufficient data base is available for evaluation, a sound recommendation will result. In some cases, it may be necessary for special studies and surveys to be made in order to obtain enough information to answer these questions. Where this is true, the Municipal Planning Commission or Township Zoning Commission should not hesitate to investigate, making certain that professional technical assistance is used whenever possible. Zoning amendment decisions should always be based on reason and fact, not on opinions, or the advice of the attorney for the applicant. It is important that members of the decision-making body focus their discussion on the reasons for approving or not approving the rezoning requests. As one publication puts it, "Vote reasons, not opinions. For example, it is preferable to register a no vote with a statement like 'I'm voting no on this proposal because it clearly violates our general plan and I'm for upholding the plan unless there's a more compelling reason not to than the evidence here shows,' rather than 'This is a lousy development and unless we stop it, it will ruin the town.'"

The following list highlights some of the most common excuses approving bodies utilize to avoid the facts.

- The property is nothing but a weed patch.
- This rezoning will help to clean it up.
- You can't keep this man from using his ground the way he wants to use it. It's his right.
- He's been farming for years. He should be able to split his farm up for his retirement security. He needs the money.
- This rezoning will let the children (parents) locate here near their

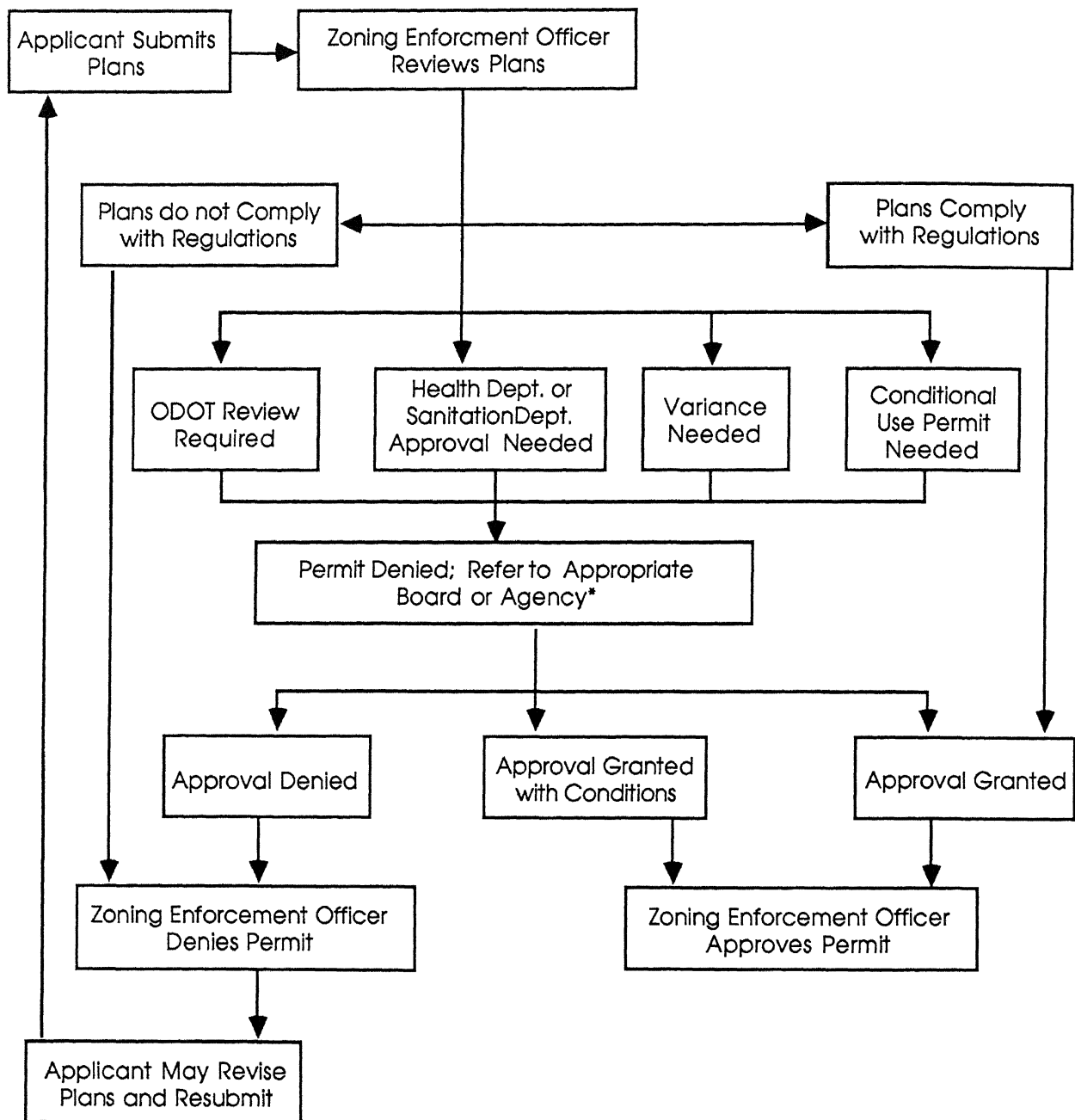
parents (children). They need help on the farm.

- I've never seen this property flood. I've been here more than fifty years.
- This man's family has lived in this community for the past one hundred years. How can we deny this?
- The owner can get more money for the ground if it is rezoned.
- We have to increase our commercial and industrial tax base today, not worry about a plan for tomorrow. Our schools need the money.
- The traffic on the street is too busy to sell this property under residential zoning.
- There is commercial zoning across the street.
- There is commercial zoning next door.
- There is commercial zoning on the other corner.
- His business is already there. Why can't he rezone more land to expand?
- He invested a lot of money in this ground and these proposals thinking the rezoning would be granted, how can we deny it?
- Like his attorney said, it's probably "unconstitutional", and we don't know for sure.
- We don't want to have to go to court, after all it really doesn't look so bad.
- They are too big an outfit. We can't deny this rezoning.
- There was a case similar to this in a neighboring county. We have to rezone it.
- Zoning is only a guideline.
- Water and sewer has nothing to do with zoning. That's the job of the Health Department.

Zoning Permit or Certificate

The zoning permit or certificate is the tool used by the community to ensure conformance with the zoning regulations. With a few exceptions regarding agricultural uses and public utilities, the state of Ohio has given local governments the power to require permits for the erection or modification of structures and for establishing uses upon land or within buildings. It is the responsibility of the Zoning Enforcement Officer to review zoning permits. The procedure is illustrated by Figure 3.

Information Required. The application for a zoning permit should be made on a standard approved form provided by the Zoning Enforcement Officer. While not all applications will require the same type and detail of information, the following list is a guide to what the Zoning Enforcement Officer will probably require to determine if the application complies with the regulations:



* Board of Zoning Appeals
Planning or Zoning Commission

Figure 3: Procedure for Zoning Permit Approval

- Name, address and phone number of applicant.
- Date of application.
- The name of the subdivision and lot number or other information necessary to establish the location of the lot.
- The dimensions of the lot based on actual survey, including square footage and/or acreage.
- The yard dimensions and the location and size of any existing structures.
- The location on the lot and size of any existing and/or proposed structure or proposed alteration, indicating dimensions and building height.
- The number of proposed dwelling units, the total residential floor area, and the number of bedrooms to be included in each dwelling unit.
- A permit from the County Health Department or Ohio Environmental Protection Agency for on site wastewater disposal, where applicable, illustrating the location of primary and secondary leaching fields.
- The proposed parking plan showing the number and location of proposed off-street parking or loading spaces.
- Evidence of approval for a variance or conditional use permit from the Board of Zoning Appeals.
- A plan for screening when applicable.
- A statement by the applicant attesting to the truth and exactness of all information supplied on the application.
- A fee as established by the legislative authority of the township or municipality.

When an application is made for a use which is only specified as a conditional use, the Zoning Enforcement Officer must refer the permit application to the Board of Zoning Appeals or Municipal Planning Commission as certain municipal regulations require, without action on his/her part. The authority of the Zoning Enforcement Officer does not include determining if a conditional use permit should be authorized. Keeping in mind that any decision made is subject to the appeal, the Zoning Enforcement Officer must maintain a complete record of all applications and all supporting information upon which the decision was based on.

Coordination with Other Regulations: The County Building Regulations Department is responsible for issuing building permits for much of the construction within the county. A building permit will not be issued unless the applicant has first secured a zoning permit from the local Zoning Enforcement Officer. Municipalities which choose to maintain their own building inspection program usually wish to streamline the building and zoning enforcement duties into one function.

The Building Regulations Department is the final authority in unincor-

porated areas for ensuring compliance with the National Flood Insurance Program. Coordination between local zoning regulations and the county floor insurance program will be vital for the program's success. Local zoning regulations can provide community input into the program through the adoption of Flood Plain Districts and compatible requirements.

In areas where public water lines and/or sewers are not available, most modern zoning regulations require that an application for a zoning permit contain documentation by the local health department that adequate on site systems have been approved. It is important for the zoning permit application to contain a record of the approved leaching system layout in order to determine that no proposed structures which would violate reserved areas. Commercial and industrial zoning permits for similar situations should be coordinated with the Ohio Environmental Protection Agency.

Inspections. The approval of a zoning permit does not indicate the final step of the procedure of the Zoning Enforcement Officer. Inspections are necessary in order to ensure that actual physical construction will conform to the approved application. The Zoning Enforcement Officer should make at least three inspections of a building while it is under construction to ensure that it complies with the requirements of the approved permit. The first inspection should be performed after the foundation is staked out, but before construction has begun. It is much easier to correct a mistake before a foundation is constructed than afterwards. Setback and other locational requirements should be carefully checked at this stage. The second inspection should take place during the construction phase. The third and final inspection should be performed after construction is completed.

Certificates of Occupancy. Some zoning regulations include a "certificate of occupancy" permit within the enforcement structure. A certificate of occupancy is normally required before a structure can be occupied and follows the completion of initial construction, major rehabilitation, or when a use changes within the structure. These types of permits are usually only required within cities or developed communities since rural areas have a slower pace of development and compliance with the zoning regulations is usually adequately monitored through the zoning permit and periodic inspections procedures. Some cities use the certificate of occupancy to ensure use compliance within commercial and industrial structures. Municipalities with building inspection services usually coordinate zoning and building inspections with the certificate of occupancy.

Nonconformities

Nonconformities are lots, uses or structures in existence prior to the adoption of a zoning regulation that do not conform to the regulation. A structure would be considered nonconforming if it was located 25 feet back from a street and the zoning district required a setback of 40 feet.

Nonconforming lots, uses and structures are permitted to remain in existence because retroactive zoning regulations are illegal. Zoning regu-

lations cannot force an existing land use to cease or an existing structure to be razed because it does not conform to a set of regulations adopted subsequent to its existence.

Municipalities and townships do, however, have the ability to limit the expansion of these structures and/or uses. They may also make provisions regulating the repair and restoration of damaged or destroyed nonconforming structures and the discontinuance of nonconforming uses. The conditions under which a damaged nonconforming structure may be reconstructed and which a nonconforming use may be reinstated after its discontinuance should be set forth within the zoning regulations.

The Zoning Enforcement Officer should maintain a list and map of nonconforming structures and uses if possible. Although assembling such a list and map is rather difficult, a record of the location, extent, and established data would be extremely helpful in solving conflicts. Such a list and map should be compiled with the adoption of any comprehensive amendments, if possible.

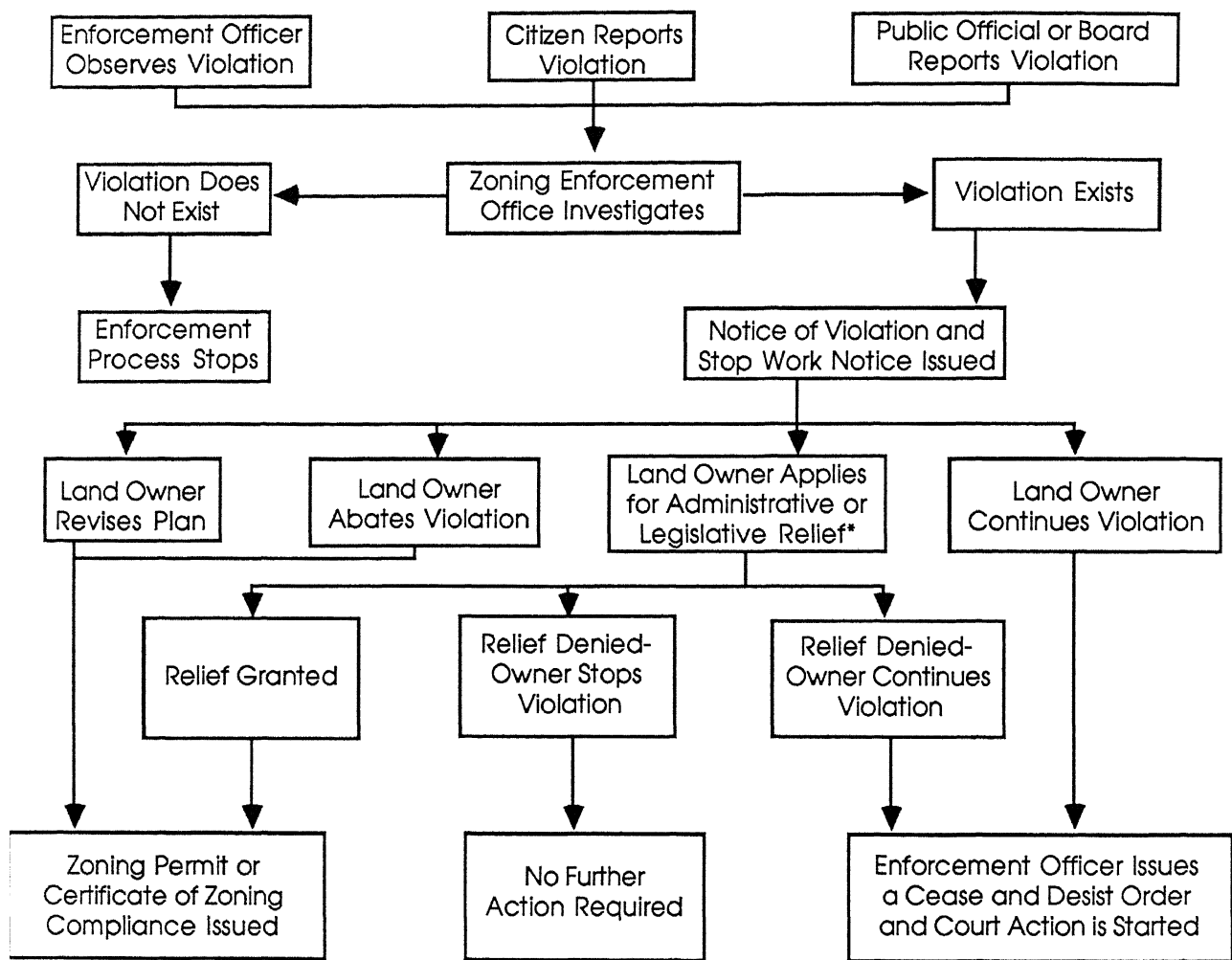
Violations

The Zoning Enforcement Officer is responsible for enforcement of the zoning regulations through the zoning permit and citation procedures. Neither the Board of Zoning Appeals nor the Township Planning Commission has the authority to ensure compliance. In addition, the legislative authority of the community does not possess direct enforcement powers. The credibility of zoning regulations lies in the ability to enforce them. A weak and ineffective enforcement program, especially one that practices or encourages selective enforcement, leads to public distrust and may cripple the entire local zoning program.

Figure 4 illustrates the usual flow of activity that occurs when a zoning violation is discovered. Violations may come to the attention of the Zoning Enforcement Officer through a number of channels. The officer may become aware through observations resulting from the necessary tours made to keep current with the developments within the community. The officer may also become aware of violations through the receipt of complaints from concerned citizens or other public officials or agencies. Complaints should be submitted in writing to reduce the number of unnecessary complaints resulting from spite or personal quarrels.

Once a complaint has been filed, the Zoning Enforcement Officer should make a preliminary site investigation. If no violation is found, it should be documented, the person or agency filing the complaint notified, and the case closed. If a violation is found, the Zoning Enforcement Officer should document the facts, including photos and witnesses if possible.

In order to take action on a property which violates the provisions of the zoning regulations, the Enforcement Officer must first notify the property owner of the nature of the violation, order the corrective measures to be taken, and establish a reasonable time period to make the corrections. If the property owner understands the violation and agrees to undertake the necessary remedies, the Zoning Enforcement Officer must make at



*Administrative Relief: An Appeal; A Conditional Use Permit; or a Variance
 Legislative Relief: A Zoning Amendment

Figure 4: Zoning Enforcement Process for Violation

least one additional visit to the site to be certain the property owner has complied. If compliance is not forthcoming, a cease and desist order should be issued and court action instigated. A complete and accurate record of notices, inspections, and the facts is necessary to proceed from this stage.

Conditional Uses

A conditional use is a use specifically identified within a zoning district in the text of the regulations. Conditional uses generally follow the intent and character of the particular zoning district, but possess characteristics different from the bulk of permitted land uses within the district. These characteristics may be objectionable due to location, site layout, or mode of operation and should be regulated. Placing special conditions on such uses is considered necessary in order to lessen any probable negative impacts on surrounding land uses.

Review Authority. Under township zoning procedures, the Township Board of Zoning Appeals is responsible for reviewing and ruling upon applications for conditional uses. Laws governing municipal zoning in Ohio are less directive. The legislative authority of the municipality has discretion to delegate the authority to the Municipal Planning Commission or Board of Zoning Appeals, and to maintain review authority over conditional use decisions. The procedures for review and approval of conditional uses should be established within the zoning regulations. The procedure used by most local governments is illustrated in Figure 5. Applications for conditional uses should include a proposed site plan and narrative by the applicant illustrating how the proposed use and site layout fits the particular location.

Approval. The administration of conditional uses must be based on a set of standards to measure the positive and negative impacts on the community or neighborhood. As far as practical, the zoning text should specify conditions and standards by which the approving body may determine whether the proposed use qualifies for a permit. Decisions cannot be arbitrary, especially in denying a conditional use. The applicant, however, must bear the burden of proof that the proposed conditional use is justified and will not be a detriment to the neighborhood. The conditional use authorization requires compliance with all of the stipulated requirements. No change to another conditional use is permitted unless approved. The zoning regulations may stipulate that the conditional use authorization expires after a designated period of time if the use is discontinued.

Decision Parameters. Decisions on conditional use applications should be made after consideration of the facts as presented by the applicant, staff personnel, and citizens at a public hearing. In order to assist Boards of Zoning Appeals and involved municipal bodies, the following questions should be considered:

- Is the proposed use specifically stated as a conditional use within the zoning district in which the property is located?
- Is the proposed use and site plan in harmony with the policies and

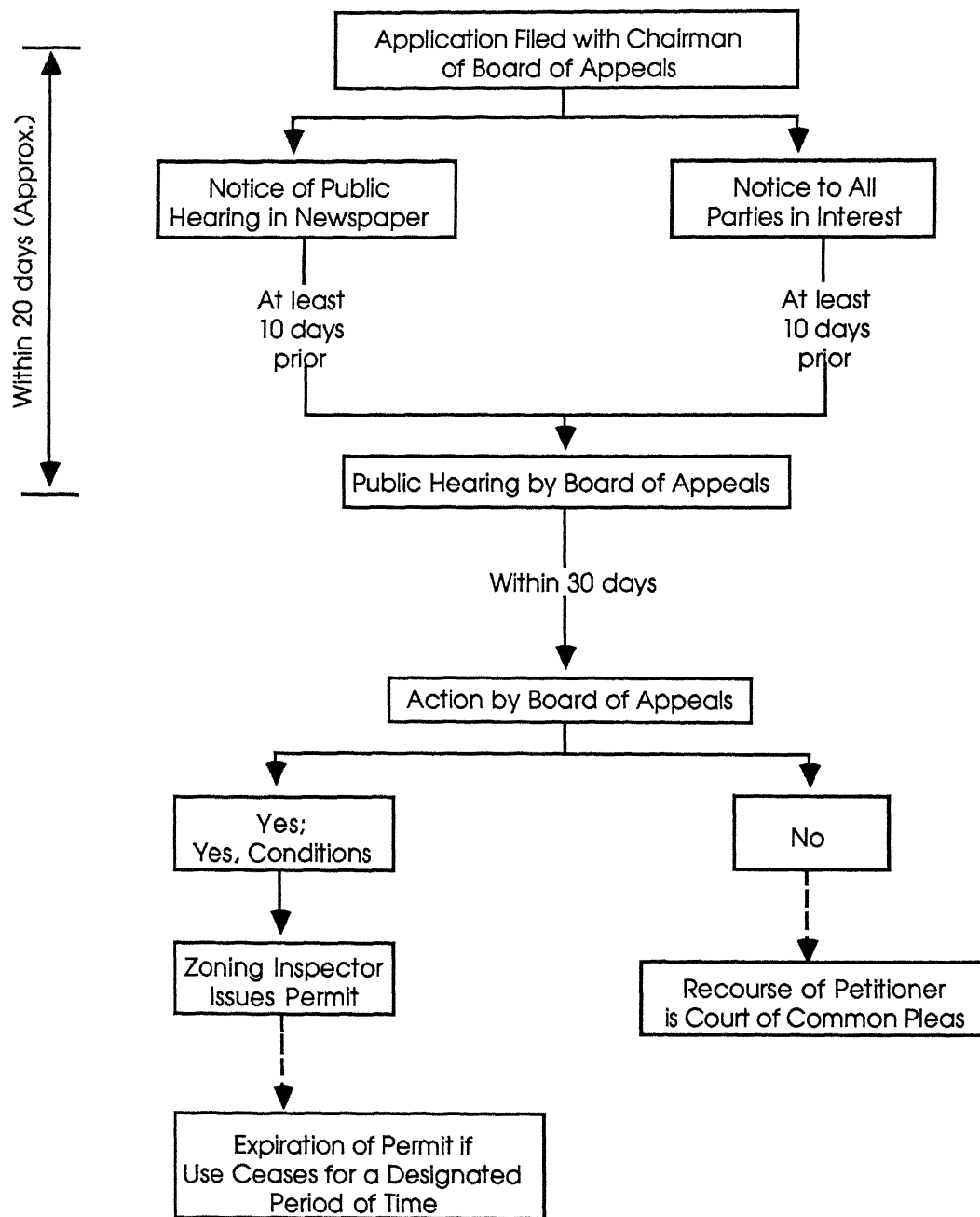


Figure 5: Procedure for Conditional Use Permit

objectives of the Future Land Use Plan?

- Will the proposed use result in the destruction, loss or damage of a natural, scenic, or historic feature of major importance?
- Will the proposed use be designed, constructed, operated, and maintained so that it shall not cause substantial injury to the value of the property in the area or neighborhood where it is to be located?
- Will the proposed use be adequately served by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers and schools? If not, will the persons or agencies responsible for the establishment of the proposed use be able to provide any such services adequately?
- Will the proposed use create excessive additional requirements at public cost for public facilities and services and be detrimental to the economic welfare of the community?
- Will the proposed use be compatible with adjoining development and the proposed character of the zoning district where it is to be located?
- What will be the impact from the proposed use? Are the location, intensity, and height of proposed buildings, walls, fences and other structures appropriate for the character of the area?
- Will adequate screening be provided?
- Will adequate off-street parking be provided?
- Will the proposed use involve activities, processes, materials, equipment and conditions of operation that will be detrimental to nearby properties by reason of traffic, noise, smoke, fumes, glare, odor or vibration which is more than would be expected from any permitted use within the district?
- Will the proposed use and site layout provide adequate safety to surrounding properties from the storage and use of hazardous and/or flammable materials?
- Is there public need for the proposed use at the proposed location?

A sound decision will result only after careful consideration of these questions. Special studies and professional advice may be required in some cases in order to obtain adequate information to make a proper decision. The findings should always be based upon reason and fact, not on opinions.

Appeals and Interpretation

The Board of Zoning Appeals has been vested with the power to hear and decide appeals from any administrative decision. Legislative acts such as zoning amendments, however, are not subject to review by the Board of Zoning Appeals. In day-to-day administration, the Zoning Enforcement Officer may not see "eye-to-eye" with an applicant or another administrative official regarding the terms of the zoning regulations, requiring resolu-

tion of the conflicts under the process of appeal. Conflicts usually involve dimensional requirements, definitions and unclear language in the text, land uses not specifically listed, and the determination of district boundaries on the zoning district map. Decisions by the Township Board of Zoning Appeals are not subject to review by other township officials. In some municipalities, however, decisions by the Board of Zoning Appeals are appealed to the municipal legislative body prior to Court review. The most common type of appeal deals with a request for a variance, discussed in the next section.

Appeal Procedure. The township zoning appeal procedure is established under Section 519.15 of the Ohio Revised Code and is illustrated by Figure 6. Most municipalities generally follow the township procedure. The party making the appeal has a 20-day period from the date of violation notice or administrative decision. Upon receipt of the application, the Board of Zoning Appeals sets a hearing date and the Zoning Enforcement Officer submits records and findings. A notice of the hearing must be published in the newspaper and sent to all parties in interest. After the public hearing, the Board of Zoning Appeals may deliberate on the appeal, but must make a decision within a reasonable time period.

Decisions made by Boards of Appeals in both townships and noncharter municipalities may only be appealed through the Court of Common Pleas. Charter municipalities may allow Council review prior to court review. The court will review such decisions to ensure they comply with applicable constitutional and statutory provisions, are based on proper procedure, are supported by competent and substantial evidence, and represent a reasonable exercise of discretion. Court review only occurs upon appeal and will only be made upon the record. The Board of Appeals may be required to conduct an additional hearing if the Court finds that the record is inadequate. Therefore, it is important that a complete and proper hearing is held on each appeal. The importance of proper procedure and a complete record cannot be overemphasized.

Variances. The variance is designed to preserve the constitutionality of the zoning regulations. It is a deviation from the strict requirements of the zoning regulations that grants relief to a particular property owner from requirements that would otherwise result in unnecessary hardship and possible confiscation of the property through denial of use. The variance is intended to serve as a "safety-valve" when zoning requirements create a hardship to a certain few because of unique circumstances. This situation should be distinguished from one which merely involves an inconvenience, a desire to create a more profitable site design, or a desire to establish a use not otherwise permitted.

Purpose. The variance is not intended to grant special favors to certain property owners that would not be available to their neighbors or to allow widespread circumvention of the local zoning regulations. Amendments by the local legislative authority are the intended procedure through which the zoning text and map are to be changed. Unfortunately, the granting of numerous variances is sometimes substituted to accomplish the same task. If it becomes evident through a pattern and quantity of variance requests that the zoning regulations are inadequate to deal with certain problems, then text or map amendments may be in order.

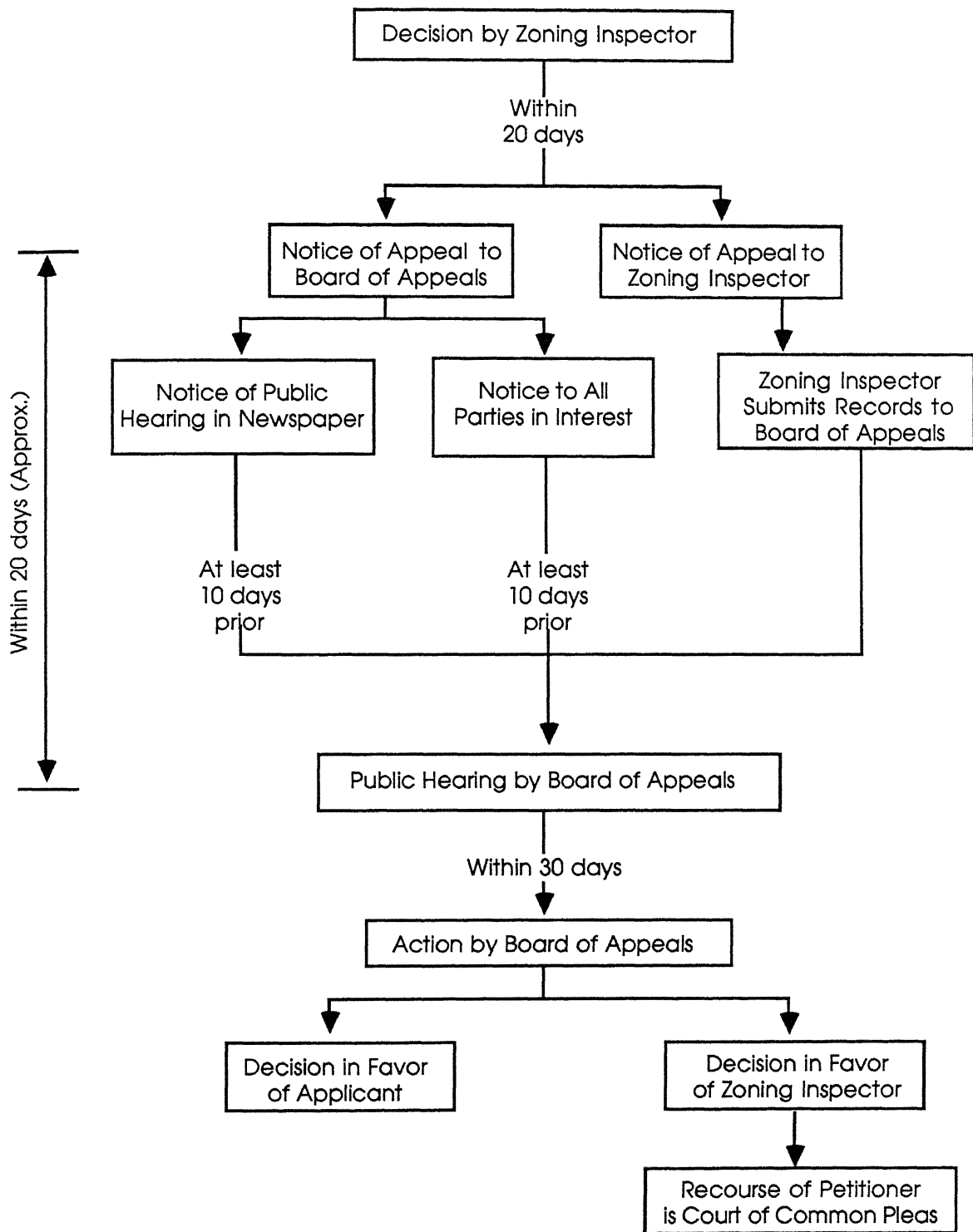


Figure 6: Procedure for Appeal of Zoning Inspector Decision

Improper zoning requirements foster variance requests.

Hardship. In order to grant a variance, the Board of Zoning Appeals must be presented with evidence that an unnecessary hardship is involved and that granting the variance will not be contrary to the public interest. The proof of hardship rests with the applicant, and must originate from one or more of the following concepts:

- The applicant would have no reasonable use of his property without relief. The applicant must show that the characteristics of the property make the permitted or conditional uses allowed within the district unsuitable. Proof of reasonable use should be based upon location and physical characteristics, not a loss of opportunity to "make more money." Economic loss is rarely unique to a single property. The argument that the property owner can make more money by using his property for uses not permitted within the district can be used by his neighbors as well.
- The hardship results from unique characteristics of the property. A variance is usually warranted if the property possesses one or more unique physical features related to topography, slope, shape, size, etc., which were not adequately recognized when the lot was created. A deep gully or severe slope upon the property may be cause to vary setback requirements. On the other hand, a request to place too large a building on the lot for the established setbacks is questionable hardship, especially if the lot is typical for the neighborhood.
- The hardship has not been created by actions of the applicant. It would be unfair to the neighborhood to permit a property owner to benefit from either his mistakes or purposeful non-compliance with the regulations. The granting of variances to compensate for mistakes in surveying, building and other similar activities only tends to endorse such actions in the future.

In summary, the variance procedure works best when the community has a good set of zoning regulations, the Board of Zoning Appeals knows the limits of its authority, the applicant is able to establish a hardship, and granting the variance will not be detrimental to the neighborhood or public interest.

Decision Parameters: Variances may be granted upon an application and the procedure is illustrated in Figure 7. Application, notification and public hearing are required before a decision is made. The decision whether or not to grant a variance should be determined after a thorough examination of the facts and how they relate to the reasons for the request presented by the applicant. The burden of proof is on the applicant. However, the Board of Zoning Appeals has the responsibility to ask the right questions in order to make an appropriate decision. The following list is to be used as a guide for determining whether or not a request warrants approval. If necessary, professional advice should be sought in order to make adequate information available. The final decision should be based on reason and fact, not opinions.

- Can the dimensional requirements of a particular zoning district be met on the existing lot?

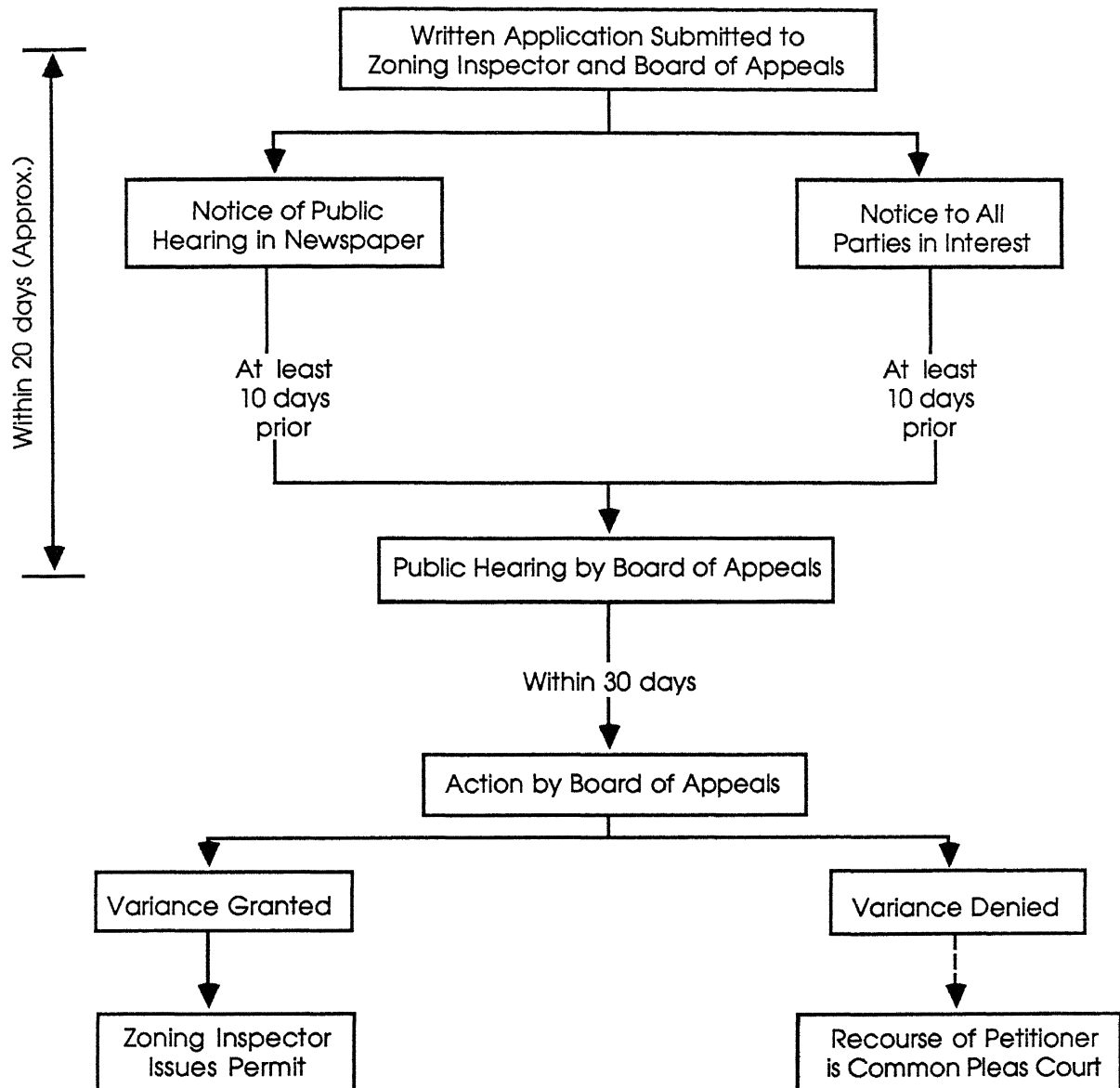
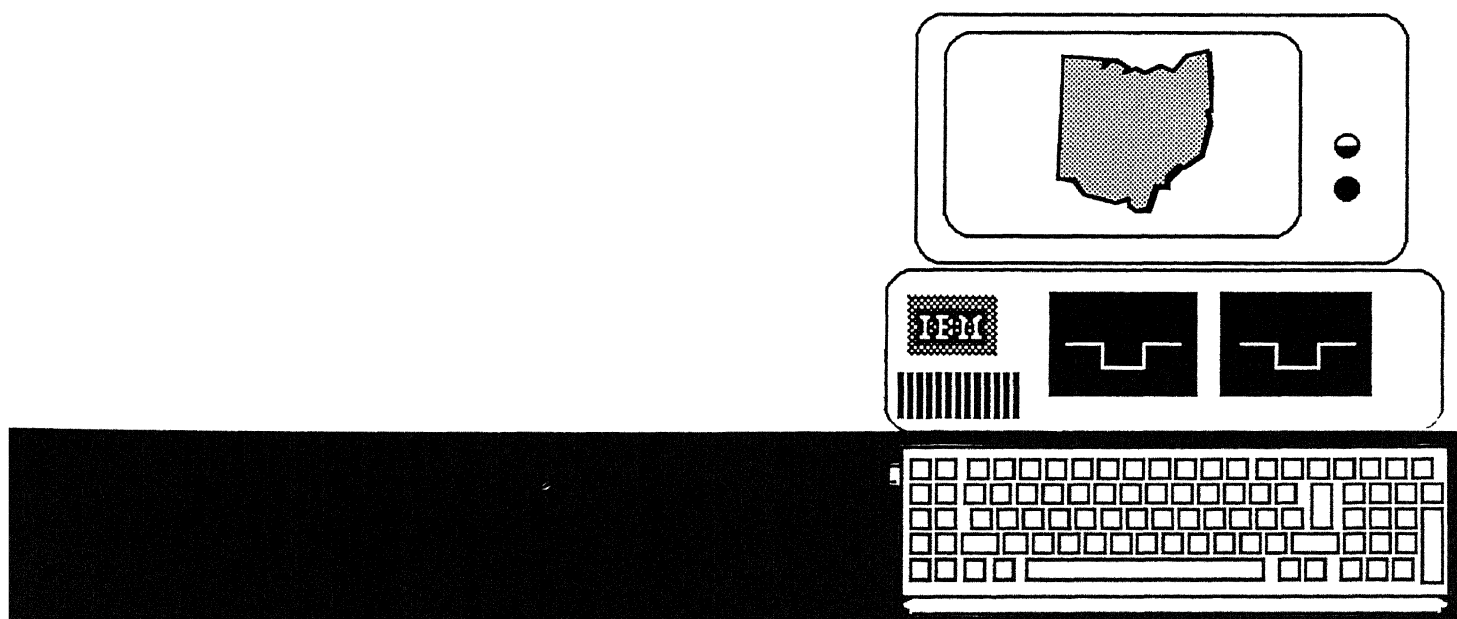


Figure 7: Procedure for Variance from Zoning Resolution

- Do special conditions and circumstances exist which are peculiar to the land, structure, or building which are not applicable to other lands, structures, or buildings in the same zoning district?
- Would a literal interpretation of the provisions of the Zoning Regulation or Ordinance deprive the applicant of rights commonly enjoyed by other properties in the same district?
- Would granting the requested variance allow the applicant any special privilege that is denied to other lands, structures, or building in the same district?
- Do any of the special conditions and circumstances result from actions of the applicant?
- Does the applicant request a more intensive use of the property than would normally be permitted under the district regulations? Is that the primary factor for requesting the variance?
- Will the proposed variance prevent adjoining properties from enjoying an adequate supply of sunlight and air? Will it substantially increase traffic congestion, increase the danger of fire, and/or increase the hazards of flooding?
- Will the proposed variance produce nuisance conditions to nearby properties, whether by reason of dust, noise, fumes, odor, vibrations, smoke or lights?
- Will the proposed variance essentially alter the character of the surrounding area?
- Is the proposed variance the minimum necessary to permit reasonable use of the land and buildings?
- Is a district amendment more appropriate?
- Is the proposed variance in the public interest?

Ohio Capability Analysis Program



OHIO CAPABILITY ANALYSIS PROGRAM

A Tool for Local Resource Management

Wayne Channell

Natural resources are often taken for granted—at least until their mismanagement or depletion threatens to interfere with our needs or comfort. We all compete for limited resources such as land and water every day. When we fail to consider the long term effects of our natural resource and land use management decisions, problems result. More often than not, the solutions to these problems are costly.

For example, a prospective homebuyer decides in August to purchase a house built on a floodplain. Everything is fine until spring, when snow-melt and heavy rains flood the house. This is bad enough for that one unlucky homeowner—but what if there are thirty other homes on the floodplain? Or a shopping mall, an industrial complex or perhaps an entire town?

An individual farmer can choose to ignore soil erosion from his fields today. However, the farmer may suffer productivity losses in the future. In the meantime, valuable fertilizer and pesticides are being eroded with the soil. The resulting sediment is also expensive to remove from road ditches and water supplies. The same is true of sediments eroded from building sites.

The Ohio Department of Natural Resources (ODNR) has a program to assist local officials and others in the use of natural resource information which can help land use decision makers avoid problems like these. The Ohio Capability Analysis Program (OCAP) is a computerized natural resource information storage and mapping system administered by ODNR's Division of Soil and Water Conservation.

OCAP satisfies two basic planning needs. It offers assurance that Ohio's published natural resource information such as soils, ground water, and geology are being inventoried on a statewide basis and that such information is being provided to local communities to facilitate their management of local resources.

The OCAP Resource Data Base

Since 1973 OCAP has converted into a computer format many types of maps and other natural resource data the Department and other state and federal agencies have compiled over the years. These maps and information include:

- soil survey maps that illustrate the different soils (called soil mapping units) found in a county; associated with the maps is a report detailing particular properties of each soil along with ratings of the soil units for

different engineering and development uses

- groundwater availability maps that illustrate expected yields in gallons per minute
- prime farmland maps that illustrate the location of the most productive lands in and near a community
- geologic maps that illustrate the depth to bedrock, the type of bedrock underneath the surface of the earth and the type of unconsolidated materials deposited from glacial action
- land use maps interpreted from aerial photography that provide an inventory of present use and development patterns
- flood plain maps that illustrate areas inundated by the 100-year frequency flood
- population and socioeconomic data from the census
- watershed boundary maps that illustrate major drainage basins
- natural area information that pinpoints unique flora and fauna

In addition to maps and data produced or compiled by the Department of Natural Resources and other state and federal agencies, other information is gathered from local sources and is entered into the OCAP computer system. Information in this category includes:

- local zoning maps
- water and sewer service areas
- parcel ownership lines
- political jurisdiction boundaries
- comprehensive land use plans

The information from these various maps is then encoded or "digitized," transforming it into a computer format. The product of digitizing is a computer map which is visually "edited" to verify that the computer generated map is an accurate representation of the original base map. As can be seen in the examples, these maps are somewhat unusual and are produced on a line printer with various typewriter characters representing the categories on the map.

Once an accurate conversion of resource information is assured, the OCAP staff can begin to use the land capability analysis process to perform the capability analyses required by local officials.

Advantages of Utilizing OCAP's Resource Data

After learning about the sources of data within the OCAP system a prospective user might well question the need to computerize the information. From the preceding description it is probably quite apparent that resource information is available directly from the local offices and the state agencies that produce the maps originally. There are four advantages that OCAP can offer, however, that make the original data more useful:

1. Soil survey attribute data can be put into map form. Tabular information from a soil survey is one of the most useful pieces of data a local official can obtain to assist in community related decisions. It includes physical and engineering properties such as shrink-swell potential and permeability as well as soil limitation ratings for various land uses such as septic tank absorption fields and dwellings with basements. The use of the data is sometimes limited, however, because it does not come in map form in the survey. It would take several months of work for local officials to manually produce individual soil attribute maps. Once the soils data is entered into OCAP any soil attribute desired by a user can be put into map form in a few hours.

2. Resource data can be mapped at any scale. Resource maps like those listed previously are published at a variety of scales making it difficult to compare and evaluate information on different maps. With OCAP, maps of different resource information can be generated at the same scale which makes the reviewer's task easier. In fact, resource maps can be reproduced with OCAP at any scale desired by the user.

3. Resource data can be mapped for any physical boundary. With OCAP, resource data can be mapped for a watershed, census tract, municipal or township area, water or sewer service area, or for an individual parcel. The OCAP system can produce maps for any boundary that is entered into the system. In addition to maps, OCAP can also produce statistical data of resource information for any boundary.

4. Land Capability Analyses can be performed. Land capability analysis is a method of overlaying resource information to produce a composite resource map. With the aid of the computer, many separate types of resource data can be evaluated simultaneously to produce composite maps illustrating an area's potential to support different uses. The advantage of using OCAP is its ability to can more complex information in less time than the manual method.

Capability Analyses Performed By OCAP

Since 1973 OCAP has been used by a variety of public and private agencies and individuals. The range of capability analyses provided over the years has been limited only by the type of problems expressed by users. Some of the analyses performed include:

- vacant land analysis
- sanitary landfills
- residential subdivisions
- commercial or industrial complexes
- archaeological site potential
- range/habitat studies for wildlife
- fire station service area

- application of municipal sewer sludge to agricultural land
- erosion potential estimates

Search Capability—An Added Advantage Of OCAP

OCAP has the capability to delineate areas within a given distance from a point, line, or area and to map specified resource characteristics for the area. This search feature permits land capability maps to be expanded for more meaningful information and analysis. This search capability has been used in analyzing:

- areas within the extra territorial review limits of corporate boundaries for residential subdivision suitability
- existing land uses in the vicinity of a proposed wastewater treatment plant
- multifamily housing needs to find and identify acceptable siting requirements on vacant urban land
- the potential for large scale development sites within a one mile radius of rail lines
- the physical characteristics of an archaeological site to identify potential dig sites within one kilometer increments of the known site
- the potential for small commercial structures in the vicinity of a proposed subdivision area
- service area overlaps of existing fire stations to determine the need to construct either one or two additional stations.

A Word Of Caution

OCAP offers a rational and convenient decision making tool that offers a means for a lay person to understand and to adapt its composite resource maps along with its search, mapping, boundary, and scale resource data for local application. There is a definite tendency for some users to rely totally on OCAP in making decisions. Local officials are encouraged to utilize OCAP in arriving at a land use decision. A supplemental analysis of specific site conditions, however, is a necessity. The soils, geology, groundwater, and land use data that are compiled by various experts and within OCAP are not site-specific. That is, generalizations about data are made by these experts. When put into OCAP maps at a later time, the data retains these generalizations. OCAP cannot improve upon the accuracy of the original data. More specific OCAP analyses could be made but at a much greater cost in the original inventory of data. The bottom line is that the base maps from which OCAP works or the OCAP maps themselves are not site-specific maps. They are to be used to obtain general resource information only.

OCAP Projects

There are two types of OCAP projects. Land capability analysis projects produce capability maps illustrating an area's problems and potentials for specific resource use and management application. This project costs a county \$6000 and takes approximately 18 months to complete.

Recently, OCAP tax projects have gained popularity. The tax project is a special application of OCAP for determining land value assessments for the Current Agricultural Use Value (CAUV) Program. This type of project takes approximately two years to complete and the average cost is \$12,000 - \$14,000. The higher cost for tax projects is due to the increased amount of work required to include parcel information in the county data base.

Continuing Assistance To Counties

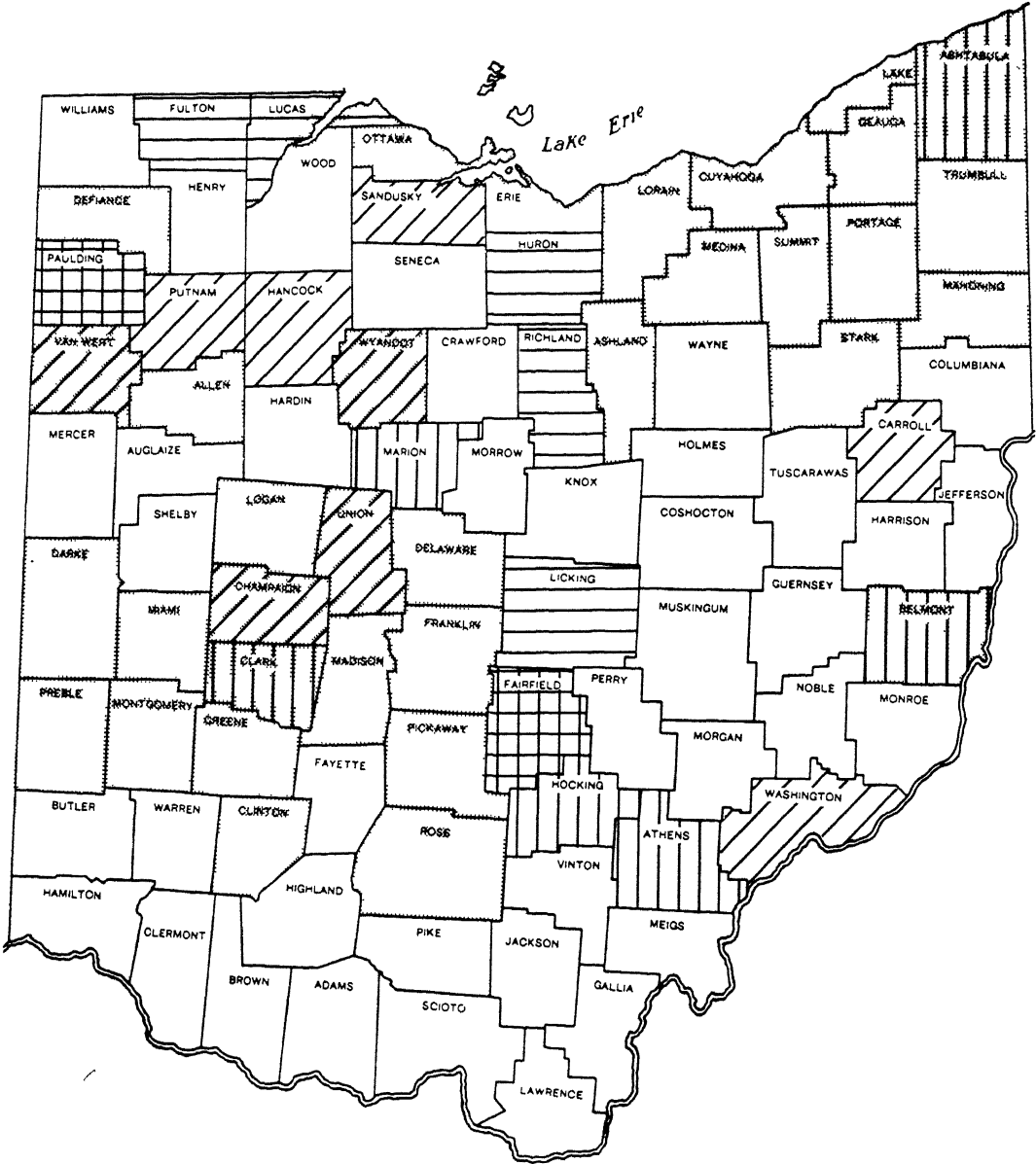
In an effort to make capability analyses and tax projects as useful as possible to counties, the ODNR staff works closely with local officials once the computer data base is completed. Our staff is committed to providing technical assistance in use of the OCAP products. We are available for seminars and workshops on the use and interpretation of your maps. Also, through our continuing assistance program local agencies and offices receive limited updating, analyzing, mapping and digitizing of data base information annually at no charge.

For additional information about OCAP and its special applications, please write or call:

Ohio Department of Natural Resources
Division of Soil and Water Conservation
The Ohio Capability Analysis Program
Fountain Square, Bldg. E-2
Columbus, Ohio 43224
Phone 614/265-6778

OCAP Project Areas

Status as of August, 1986



Land Capability

Tax Assessment



Completed
33 Counties and Coastal Areas



Completed
9 Counties

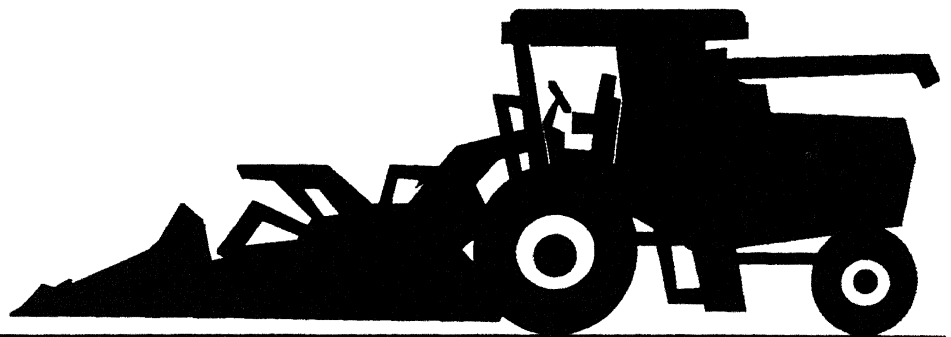


Active
7 Counties



Active
8 Counties

Agricultural Districts Law



OHIO'S AGRICULTURAL DISTRICTS LAW

John D. Rohrer

"Each week the United States loses 35,000 acres of its agriculture land base—enough to feed 100,000 Latin Americans, Africans or Asians for an entire year. This loss is permanent, and it is cumulative. For those who would grow the crops and consume them alike". This statement was given as evidence before the congressional agriculture committee for the Agriculture Land Retention Act which was never enacted.

Whether one sees a need to preserve prime farm land depends largely upon perspective. Today, we have enough prime land in the U.S. to more than meet our domestic needs. Worldwide, we already have a shortage. But, there is a lack of effective demand (buying power) to fully utilize all prime land everywhere. The year 1986 may serve as a high water mark in the flood of farm produce and the government's attempt to bring supply down to demand. Past experience shows world weather patterns and markets could quickly reverse this picture.

In the meantime, many groups are concerned about the conversion of farm-land to other uses. Within the U.S. only one fifth of the land is suitable for cropland. Within Ohio only five to 10 percent of the land is Class I (land with the least hazards for crop production). Economic decisions made in the short run may prove inefficient in the longer term, especially during periods of depressed farm produce prices.

As transition takes place in the rural areas with new housing, industrial complexes and recreational pursuits, there is an increased possibility for conflict and confrontation between the farmer and neighbors as the farmer conducts regular business activities. These conflicts may be the result of odors, dust, noise and the use of pesticides by the farmer. Such conflicts have resulted in strained relations and court injunctions and have required major business adjustments.

Prime land changes use prematurely with both push and pull forces. The pull is provided by the high economic opportunity with sales for development. The push is provided by higher real estate taxes, the threat of nuisance suits and assessments for public works. Ohio has taken several measures to deemphasize the effect of the push forces with current agriculture use value (CAUV) taxation and the state sewer and water rotary fund. (Though the latter is so grossly underfunded it has been of little help.)

Many attempts have been made by various states to preserve agricultural land and the right to conduct agricultural activities. One of the more popular of these is zoning. Of a total 1,317 Ohio townships, 675 have rural zoning provisions. Approximately 80 percent of Ohio's population lives in zoned (rural and urban) areas.

In Ohio, rural zoning may not prohibit the use of any land for agricultural purposes. Concurrently, the agricultural zones are usually vaguely defined, which allows nearly all development on a piecemeal basis. Other development occurs under the broad rubric of agriculture. Some townships have attempted to write rural zoning resolutions with more exclusive agriculture zones. State law exempts public utilities that include things from motor freight carriers to water and sewer systems.

During the early 1970s several legislative initiatives were made to help preserve agricultural land and guide urban expansion in Ohio. During 1975 the General Assembly appointed a legislative study committee called the "Ohio Land Use Review Committee" to review the problem and develop recommendations. In June of 1977 the Committee issued its report of the 22-month study and public testimony. Various bills have been proposed during each legislative session since the report. Amended Substitute Senate Bill 78 was the first major legislation enacted to deal with the land use problems outlined by the Land Use Review Committee. It was passed on March 10, 1982, and became effective on June 29, 1982.

Amendments to SB 78 were passed in November 1982 with Amended Substitute House Bill 35. The bill became effective on January 1, 1983. House Bill 551 became law September 21, 1984, and requires that the Agricultural District be established before County Commissioners adopt the resolution to use assessments to finance a utility project. This enables the county to plan the project without last minute changes that make the plan unfeasible. The various aspects of these Ohio legislative changes are the discussion of this paper.

Agricultural Districts

The 1982 Ohio legislation provided the opportunity for a farmer to form an agricultural district. The formation of an agricultural district is an individual farmer decision provided two tests are met.

The land must be devoted exclusively to agriculture, or devoted to a federal government land retirement or conservation program during the year of application and for at least three years prior to year of application.

The land must be composed of tracts, lots or parcels that total not less than 30 acres in size, or produce an average gross income of at least \$2,500 during the past three years. Or, the owner can present evidence of an anticipated gross income of \$2,500 (Ohio Revised Code 929.02).

These criteria are the same as those needed to participate in the Current Agricultural Use Value (CAUV) program for real estate taxation or under use valuation for estate tax purposes. Participation in either is independent. The same land can be in either program separately or in both the CAUV and the agricultural district program concurrently.

It is possible for a farmer to place all or a portion of his/her land into an agricultural district. For example, one farmer decided to place only a portion of land into an agricultural district because that one parcel had potential for development. The farmer left the parcel of land with some development potential out of the agricultural district. Thus, the farmer has the option to sell lots in the future without the possibility of a penalty if

withdrawn from an agricultural district. Other parcels of land that the farmer owned were placed in an agricultural district. (The ability to place specific tracts of land in an agricultural district, and not all of the land, is not addressed specifically in the Code but can be gleaned from ORC 929.02 (A)(1) and also under the agricultural district renewing provisions of ORC 929.02(C).)

Definition of Agricultural Production

Agricultural production includes: commercial agriculture, animal husbandry or poultry husbandry; the production for a commercial purpose of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental shrubs, ornamental trees, flowers, or sod; or any combination of such husbandry or production and includes the processing drying, storage and marketing of agriculture products when those activities are conducted in conjunction with such husbandry or production (ORC 929.01 (A)).

This is a rather broad definition of agricultural production and would include such activities as grain drying, even on a parcel where the grain is not growing. The definition certainly includes all normal kinds of livestock and crop production.

Application for Agricultural District

The application form for placing land in an agricultural district is available from the County Auditor's Office (see OCES Extension Bulletin 265-MM402, "Land Use Legislation").

If a farm is located outside of a municipality the owner makes application to the County Auditor. If the farm meets the tests of 30 acres or more or \$2,500 average gross income over the last three years, the Auditor shall certify the application (ORC 929.02 (A)).

If the farm is within a municipality or included in land for which an annexation petition has been filed with the County Commissioners, the application must be filed with the County Auditor and also with the Clerk of the municipality (ORC 929.02 (B)). The legislative body of the municipality must then have a public hearing on the application within 30 days. Other procedures for the municipality are set forth in ORC 929.02 (B). The municipal legislative body may approve, approve with modifications, or reject such application. One example of an approval with modification comes from Butler County where a farm was granted the right to be an agricultural district but did not acquire the deferment of assessments protection which will be reviewed later. If the legislative body modifies or rejects an application they must be able to demonstrate that having the land placed in a district would create a substantial adverse effect on: 1) the provision of municipal services within the municipal corporation; 2) efficient use of land within the municipal corporation; 3) the orderly growth and development of the municipal corporation; or, 4) the public health, safety or welfare (ORC 929.02 (B)).

If an applicant's request for being in an agriculture district has been denied or the application has been modified, the decision of the legisla-

tive body and the County Auditor may be appealed to the Court of Common Pleas (ORC 929.02 (A) (2) and (B)).

Term of an Agricultural District

Once an application has been approved for land to be placed in an agricultural district, that district shall continue for a five-year period from the date of application (ORC 929.02 (A)). If the owner desires to continue in the district, reapplication may be made at the end of the five-year period. Such reapplication is to be made at any time after the first Monday in January and prior to the first Monday in March of the year in which the agricultural district terminates. The County Auditor must notify the landowner of the need for renewal. Such reapplication may be for all or any portion of the land (ORC 929.02 (C)).

If land has been placed in an agricultural district and it is subsequently annexed by the municipal corporation, the owner need not make application to the municipality either at the time of annexation or at any subsequent reapplication if the following criteria are met:

- The land was not sold or transferred to another person (except a lot to a member of the immediate family).
- The owner who established the district did not sign the annexation petition.
- The owner did not vote in favor of annexation.

If any of these three conditions did occur, the municipality would have review powers at the time of the five-year renewal.

A question could be raised as to how or why the owner would prove a voting record. While the intent is clear, our voting privilege is thought to be private. It could be that an affidavit from the owner as to voting record on the annexation issue would suffice (ORC 929.02 (E)).

Penalties for Removal from Agricultural District

If, during any five-year period, the owner of the land chooses to remove the land from the agricultural district, a penalty is assessed. That penalty is one-half of the tax recoupment that would occur under current agricultural use valuation (CAUV) of land for real estate tax purposes (ORC 5713.34). The penalty is computed for the land converted to other uses rather than for all the land in the agricultural district.

The penalty under CAUV is that the owner shall pay any tax savings realized during the four-year period immediately preceding the year of change from an agricultural use.

The penalty for withdrawal from an agricultural district shall be in addition to any recoupment under CAUV. Thus it follows that if the land is removed from an agricultural district, one-half of the amount of tax savings during that four-year period would be paid to the County Auditor.

If the land had not been in the current agricultural use taxation

program for real estate taxation there would still be a penalty for withdrawing from an agricultural district. If the land had been in an agricultural district for less than four years, the penalty would be for the period in the district (ORC 929.02 (D)).

Withdrawal from an agricultural district is defined to include the explicit removal of the land from an agricultural district, or conversion of land in an agricultural district to use for purposes other than agricultural production (ORC 929.01 (B)).

Advantages of Placing Land in an Agricultural District

There are several advantages to be realized when placing land in an agricultural district: deferment of special assessments, protection granted from civil actions for nuisances and from criminal statutes, and an additional review process if the land is taken by appropriation. The agricultural districting legislation (SB 78) also extended a level of zoning law protection to roadside markets whether or not the farm is in an agricultural district.

Deferment of Special Assessments

The new law states that no public entity shall collect an assessment for purposes of sewer, water or electrical service on property within an agricultural district except for the property that may be in a residential lot of the owner or any other non-agricultural structure which may be located in the district (ORC 929.03).

This can be a major benefit for some farmers. Some property in Ohio has been assessed at high amounts when water and sewer lines were being extended into a parcel being used for agricultural purposes.

The water and sewer lines may be passing through the agriculture parcel on the way to a residential or industrial development with an assessment being made on agricultural property on a front footage and total acreage basis. Assessments like this tend to push land out of agricultural production prematurely even when an underlying public policy is to keep land in agricultural production or at least to keep business disruption at a minimum.

The assessments which have been deferred will become due when land is withdrawn from an agricultural district (ORC 929.0 (B)). If the owner uses the service for which the special assessment was made, a prorated one-lot assessment may be collected.

There is a provision for an owner to transfer a lot to a son, daughter, brother, sister, mother or father for the purpose of constructing a dwelling in which the relative will reside for at least three years. Again, if the service for which the special assessment was deferred is used, then the assessment will become due for that lot.

When the deferred assessment is triggered there is also an interest charge to be paid. The interest is that which was actually paid on bonds or notes which were taken out for the project up to but not exceeding a period of twenty-five years. Upon the request of the land owner, an

extended repayment schedule may be established for the owner (ORC 929.03 (C)).

Any partial withdrawal or change in use other than a sale of a residential lot to specified relatives, will trigger the deferred assessment within the total agricultural district. This may become critical even upon the renewal of an agricultural district if some acreage is left out. The trigger for all deferred assessments should not be confused with the penalty of one-half of CAUV savings (or potential savings if land was not taxed according to CAUV) on land converted to non-agricultural use.

It should also be noted that the list of relatives for sale of a lot is very specific. A transfer of a parcel to a daughter-in-law or son-in-law as tenants-in-common along with the grantor's own child may trigger the deferred assessment for the total property. A question could arise if the specified relative transfers the lot to a non-relative after the three-year period. The enforcement of these critical points will depend upon County Auditor interpretations.

The Water and Sewer Commission (ORC 1525) is listed as a source of money for the public entity granting deferrals under the agricultural district program. The agricultural district deferrals are to receive priority loans (ORC 1525.13 (C) and ORD 292.03 (E)). Amounts borrowed are to be repaid when the public entity collects on the deferred assessment.

Projects might not be constructed were they entirely dependent upon the Water and Sewer Commission fund. The commission has not been sufficiently funded since its formation in 1977. The Ohio Environmental Protection Agency Director shall not issue an order to require a public entity to levy an assessment for a water or sewer project unless the state water and sewer fund is sufficient to cover deferred assessments. However, there are alternative funding possibilities. For example, it may be possible for such projects to be funded without relying on the Water and Sewer Commission account by assessing the users of any such water and sewer development rather than assessing land in an agricultural district.

Nuisance Law Protection

The owners of land in an agricultural district are granted protection from any civil actions regarding nuisances involving agricultural activities. The statute provides a complete defense if:

- the activity is conducted within an agricultural district;
- such activity was established within the district prior to the plaintiff's activities or interest on which the action is based;
- the plaintiff is not involved in agricultural production; and
- the agricultural activities were not in conflict with any federal, state and local laws and rules relating to the alleged nuisance, or were conducted in accordance with generally accepted agricultural practices (ORC 929.04).

We are not aware of any court test of these provisions in Ohio. Connecticut's similar "right-to-farm" legislation was recently upheld. A

neighbor to a dairy farm had asked for damages and an injunction against spreading manure on the land because of the odor and subsequent flies. In denying the suit, the judge noted that the farming activity predated the residential development and that the farmer followed generally accepted agricultural practices.

There may be a constitutional question raised under Ohio's law by offering unequal protection to those not involved in agriculture production.

Plaintiffs who are not involved in agricultural production may be precluded from bringing a successful nuisance action. However, a plaintiff who is involved in agricultural production could successfully bring an action.

The definition of agricultural activities may also be vague. Would a doubling in size or adoption of new technology be construed to be a new agricultural activity?

Exemptions to the Air Pollution Law

A new level of protection against criminal nuisance actions is granted to all Ohio farms whether or not land has been placed in an agricultural district. It exempts the emission of "air contaminant" including particulate matter, dust, fumes, gas, mist, smoke, vapor or odorous substances from agricultural production activities when the farm operation meets the following criteria (ORC 3767.13 (A,B)):

- Activities are generally accepted agricultural practices.
- Activities were established prior to adjacent non-agricultural activities.
- Activities have no substantial adverse effect on the public health, safety or welfare.
- Activities do not result from negligent or other improper operations (ORC 3767.13 (D)).

This exception also extends to ordinances, resolutions, rules or other enactments of a state agency or a political subdivision that prohibits excessive noise. Provided the above conditions are met, the Ohio EPA cannot enforce air containment rules for agriculture production activities. One of these exclusion is its failure to include the installation and operation of off-farm facilities for the storage or processing of agricultural products.

Appropriation Protection

Land in an agricultural district acquires a level of protection from appropriation by a public or private agency. That limitation states that no more than 10 acres or 10 percent, whichever is larger, of a property under one ownership may be appropriated without further review if it is in an agricultural district (ORC 929.05).

Whenever a public or private agency desires to appropriate land that

has been placed in an agricultural district, that agency must give written notice of intent to the Ohio Department of Agriculture. That notice of intent shall be accompanied by a report justifying the proposed action, including an evaluation of alternatives that would not involve an agricultural district. The statutes set forth procedures for the Ohio Department of Agriculture to conduct hearings, review and make final findings and recommendations to the appropriating agency. The agency shall use the findings to reach its final decision. But the agency is apparently free to differ from the Director's final recommendations.

A limitation has been established on the distribution of public funds for non-agricultural uses of land in agricultural districts. The statute states that no public entity or person may advance a grant, loan, interest subsidy, or other distribution of public funds which would enable non-agricultural uses of land in agricultural districts (ORC 929.05 (A)).

There are four exceptions of the limitations placed on appropriation powers. The first exception is that the limitation does not apply to any lines or facilities used to transmit or distribute electricity; any gas or oil pipelines or other facilities used for exploration production, storage, transmission or distribution of natural gas, synthetic gas, or oil; any telephone lines; or to any activity of facility under the jurisdiction of the Ohio Power Siting Board. However, the Ohio Power Siting Board is required to consider the impact on the viability of any existing agricultural district as it decides whether or not to grant a certificate for the construction, operation or maintenance of a major utility facility (ORC 4906.10 (A) (7)).

The second exception is that the limitation on appropriation powers does not apply to any emergency project immediately necessary for the preservation of public health, safety or general welfare.

The third exception is that the limitation placed on appropriation powers do not apply to a lot which the owner transfers to a son, daughter, brother, sister, mother or father.

The fourth exception states that if any agency has received approval of an environmental document that includes consideration of the impact on agricultural land from an appropriate federal agency and the Ohio Department of Agriculture is listed among the agencies working in coordination of the document, then the Ohio Department of Agriculture is not required to give further review to the appropriation action.

Roadside Market Protection Under Zoning

The agricultural district legislation of 1982 (Am. Sub. Senate Bill No. 78) placed limitations on county and township zoning authorities as to how they could regulate farm roadside markets. A roadside market may be established in a district zoned for agricultural, industrial, residential or commercial purposes if 50 percent or more of the gross income received from the market is derived from produce raised on farms owned or operated by the market operator. Note that there is no need for the market to be placed on the farm. The market may be at a remote location and the farmer would have the privilege to operate the roadside market. Also, there is no requirement that the owner have any property placed in an

agricultural district. The amended statutes do permit the township and county zoning authorities to continue to regulate such factors as size of structures, size of parking areas, setbacks, and egress or ingress where such regulation is necessary to protect public health and safety (ORC 303.21 and 519.21).

This provision (ORC 519.21) has been tested and upheld in a 1983 court case, *Burton Township Zoning Inspector vs. Whiting* (Court of appeals, 11th District, Case No. 1032, January 13, 1983). In that case the Court of Appeals applied the law to a set of facts which developed prior to the effective date of Senate Bill 78.

Many established roadside market operations across Ohio will benefit if this statute can continue to be applied to operations established prior to the effective dates of the Senate Bill 78 and House Bill 35.

Municipal zoning (ORC 713) is permitted to regulate agricultural activities. Operators of agricultural-type businesses located in municipalities must apply for zoning permits and meet zoning ordinance requirements. The roadside market privileges granted in SB 78 and HB 35 are specific to county and township zoning and not to municipalities. Placing land in an agricultural district is the best way for a farmer within a municipality to gain any protected status. The advantages include limitations on assessments, nuisance actions and appropriation of property, not less regulation by way of zoning.

Summary

Agricultural districts are Ohio's latest effort to reduce the amount of "push" to convert farm land to other uses. The amount of protection offered farm land must be balanced by society's need for public easements and development.

The legislation attempts to establish agriculture activities as legitimate and somewhat a priority use in rural areas and within municipalities with special review.

Farm markets cannot be prohibited by rural zoning provided at least 50 percent of the sales are grown by the operator.

The original law (SB 78) has already been amended (HB 35 and 551) and it is almost a certainty that the agricultural districting law will be tested and amended from time to time. Farmers and community officials need to examine the law to decide the advantages of implementation and suggest recommended changes if needed.

Acknowledgment

A special note of thanks to Paul L. Wright, Extension Economist, Agriculture Law, The Ohio State University. His paper, "Ohio Agricultural Land Preservation," presented September 9, 1983, at the OSU College of Law Conference on "Creative Strategies for Farm Financing and Tax Planning" was especially helpful. Major sections of his paper have been incorporated into this presentation.

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Appendices

Contributing Authors

James M. Dowdy - Assistant Director
School of Natural Resources
The Ohio State University
210 Kottman Hall
2021 Coffey Road
Columbus, Ohio 43210
(614) 292-2265

As assistant director of the School of Natural Resources at Ohio State University, Dr. Dowdy has major responsibility for administrative affairs and student instruction. He teaches courses in natural resources development and remote sensing and has worked with the Ohio Farm Bureau Federation Task Force on land use policy. Dr. Dowdy received his bachelor's degree in geology from Berea College and his master's in photogrammetry and doctorate in geography from The Ohio State University.

James E. Kunde - Director of Governance Programs
Kettering Foundation
5335 Far Hills Avenue
Dayton, Ohio 45429
(513) 434-7300

In October of 1973, Mr. Kunde was appointed by the Charles F. Kettering Foundation to develop and direct an Urban Affairs Program. In October 1982, he was made Director of Governance Programs for the Foundation.

In his position with the Kettering Foundation, Mr. Kunde has served on the Public Sector Committee of the National Commission on Productivity, the National Urban Leadership Roundtable, and numerous other panels and advisory boards. Mr. Kunde also serves as a part-time instructor in the Graduate School of Public Administration at the University of Dayton, and as a part-time instructor in the Graduate School of Business at Texas Christian University. Prior to coming to the Foundation, Mr. Kunde was city manager of the City of Dayton for four years. He also served as City Development Director of Kansas City, Missouri, and County Administrator of Jackson County, Missouri. Mr. Kunde graduated from Wittenberg University in Springfield, Ohio, and received his Master of Governmental Administration degree from the Wharton School of the University of Pennsylvania.

**Donald M. Buckley - Executive Director
Clermont County Planning Commission**
76 S. Riverside Drive
Batavia, Ohio 45103
(513) 732-7230

Mr. Buckley has been the executive director of the Clermont County Planning Commission since 1976. He graduated from the University of Kentucky with a bachelor of arts degree and received advanced training in district economic development and industrial development at Georgia Institute of Technology. Prior to 1976, Mr. Buckley worked as executive director of the Buffalo Trace Area development district. He also served as the executive director of the Ohio Valley Regional Development District. Mr. Buckley has been a member of the American Institute of Planners since 1969 and became a member of the American Institute of Certified Planners in 1978. He has served on the Technical Coordinating Committee of the Ohio-Kentucky Regional Council of Governments, the Central Ohio Valley Health Planning Authority and the Community Facilities Committee of the Ohio Valley Regional Development District.

**Harry M. Welsh - Attorney at Law
Renwick, Welsh & Burton**
9 North Mulberry Street
Mansfield, Ohio 44902
(419) 522-2889

Mr. Welsh is a partner in the firm of Renwick, Welsh & Burton. He serves as Solicitor for the Village of Ontario and Law Director for the Village of Lexington. From 1971 until 1980 he was an Assistant Richland County Prosecuting Attorney where he worked with fourteen townships in that county which had enacted zoning. Mr. Welsh received his bachelor of arts degree in 1963 and his Juris Doctorate in 1966, both from the University of Toledo and a Masters of Law degree from the University of Michigan in 1967. Mr. Welsh served from 1967 to 1971 as an assistant professor of Law at the University of Tennessee.

**Robert C. Schroeder - Executive Director
Regional Planning and Coordinating
Commission of Greene County, Ohio**
651 Dayton-Xenia Road
Xenia, Ohio 45385
(513) 376-5180

Mr. Schroeder's work includes the design analysis and program development required to express spatial and temporal interrelationships among resources, facilities and activities of member communities. Special emphasis has been placed on economic development, solid waste management, transportation as well as subdivision and zoning administration. Mr. Schroeder received his bachelor's degree from Bowling Green University and his master's degree in urban and regional planning from the University of Mississippi. Prior to 1974 he was planning director of the Rome-Floyd County Planning Commission in Rome, Georgia. Mr. Schroeder received the National Association of Counties (NAC) New County Achievement Award in 1975 for innovative development of the Regional Planning and Coordinating Commission and the NAC New County Achievement Award for Economic Development Program in 1977.

Wayne E. Channell - Administrator
Ohio Department of
Natural Resources
Fountain Square
Columbus, Ohio 43224
(614) 265-6778

Mr. Channell is administrator of three Departmental land resource activities: community delivery service for the Ohio Capability Analysis Program (OCAP), the Jennifer M. McSweeney Land Use Planning Course for Local Officials, and the Ohio Critical Areas Program. Mr. Channell received his bachelor's degree in education and his master's degrees in natural resources and city and regional planning from The Ohio State University.

John D. Rohrer - Acting Director, Community
and Natural Resources Development
Ohio Cooperative Extension Service
020 Agricultural Administration
2120 Fyffe Road
Columbus, Ohio 43210
(614) 292-8436

Dr. Rohrer is responsible for developing educational resources and assisting county Extension agents throughout Ohio to conduct educational programs in the area of community development. He has served as both a county Extension agent and an area Extension agent in Ohio, and worked in the community development field in Algeria from 1965 to 1968. Dr. Rohrer received his Ph.D. from The Ohio State University with major studies in public policy evaluation, administration and community leadership.

***The Jennifer M. McSweeney
Land Use Planning Course
and
Land Use Planning Workshop***

Decisions regarding growth and development are made in Ohio by local officials at the township, village, city and county levels. The Jennifer M. McSweeney Land Use Planning Course is offered to inform and assist these local officials in technical matters relating to land use decision making and implementation and to identify sources of continuing assistance in state government and elsewhere.

The Land Use Planning Workshop is designed primarily for past attendees of the Land Use Planning Course and offers in-depth study of selected land use issues.

The Course and Workshop are produced by the Ohio Department of Natural Resources, the Ohio State University School of Natural Resources, and the Ohio Cooperative Extension Service.

For additional information, please contact: Dr. James Dowdy
School of Natural Resources
210 Kottman Hall
2021 Coffey Road
Columbus, Ohio 43210
(614) 292-2265

***Jennifer M. McSweeney
1940 - 1980***

Jennifer McSweeney was a singular blend, both planner and doer, optimistic in perspective and pragmatic in approach. In both her private and professional lives she advocated careful planning and intelligent resource management. Soon after coming to this country from her native England, Jenny enrolled at The Ohio State University and worked toward a graduate degree in natural resource management. Upon leaving the University she assumed the position of Land Use Coordinator in the Ohio Department of Natural Resources. Jenny recognized the need for local governments to accept increased responsibility for planning the future use of land and management of resources in their communities. Much of her work in the Department was directed toward providing local officials with the knowledge and understanding necessary to assume this greater role. The Land Use Planning Course is in large measure the result of Jenny's inspiration and hard work. In recognition of her contribution to wise land use in Ohio, this course has been named the Jennifer McSweeney Land Use Planning Course.

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